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No. 290.

[redacted]

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, APPELLANT,

vs.

[redacted] A. REYNOLDS, FRANK R. SPINNING, AND [redacted] A. LEWIS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF WASHINGTON, [redacted] V. TANNER, ATTORNEY GENERAL.

[redacted]

[redacted] THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

[redacted]

[redacted]

(24,000)

(24,882)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 220.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, APPELLANT,

vs.

CHARLES A. REYNOLDS, FRANK R. SPINNING, AND ARTHUR A. LEWIS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF WASHINGTON, AND W. V. TANNER, ATTORNEY GENERAL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

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a Supreme Court of the United States.

No. —.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. LEWIS, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

1 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. LEWIS, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Names and Addresses of Counsel.

James B. Howe, Esq., Attorney for Plaintiff, 860 Stuart Building, Seattle, Washington.
Hugh A. Tait, Esq., Attorney for Plaintiff, 860 Stuart Building, Seattle, Washington.
W. V. Tanner, Esq., Attorney for Defendant, Temple of Justice, Olympia, Washington.
Scott Z. Henderson, Esq., Attorney for Defendant, Temple of Justice, Olympia, Washington.

2 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 60. In Equity.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. LEWIS Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Bill of Complaint.

To the Honorable the Judge of the District Court of the United States for the Western District of Washington, sitting in equity:

Puget Sound Traction, Light & Power Company, a corporation created and existing under the laws of the State of Massachusetts having its principal office in the State of Washington, in the City of Seattle therein, brings this its Bill of Complaint against Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, each a citizen of the State of Washington and each a resident of the Western District of Washington, except Arthur A. Lewis, who is a resident of the Eastern District of Washington.

And thereupon plaintiff complains and shows unto your Honor as follows:

3 I.

Plaintiff for two years past has been and now is a corporation created and existing under the laws of the State of Massachusetts maintaining its principal office in the State of Washington, in the City of Seattle in such state, and prior to the institution of this suit plaintiff paid its last annual license fee owing to the State of Washington.

II.

The defendants, Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis are now, and for six months last past have been the duly appointed, qualified and acting Public Service Commissioners of the State of Washington, constituting the Public Service Commission of the State of Washington; and the defendant W. V. Tanner is now, and for more than six months last past has been, the duly elected, qualified and acting Attorney General of the State of Washington. Each of said defendants is a citizen of the United States and a citizen and resident of the State of Washington. The defendant Arthur A. Lewis is a resident of the Eastern District of Washington, and the other defendants are residents of the Western District of Washington.

III.

Plaintiff by its Articles of Incorporation is authorized to construct, maintain and operate street railways, electric railways, electric lines, and to do a general street railway, electric railway, electric lighting and power business in the State of Washington and elsewhere, and ever since its incorporation plaintiff has been engaged in all such business in the County of King and State of Washington.

IV.

The Seattle Electric Company, in the year 1900, was incorporated under the laws of the State of Washington, for the purpose of carrying on the construction and operation of electric railways, street railways and electric lighting and power lines, and doing a general street railway and electric light and power business in the State of Washington, and such company still is a corporation, but is not now engaged in transacting such business; but such company was engaged in transacting such business down to and inclusive of the year 1912. In the year 1900 The City of Seattle was and it still is a municipal corporation created and existing under the laws of the State of Washington; and during the whole of the year 1906, and thereafter until its consolidation with the City of Seattle, the City of Ballard was a municipal corporation created and existing under the laws of the State of Washington. During the whole of the year 1906 and thereafter until its consolidation with the City of Seattle, the City of West Seattle was a corporation created and existing under the laws of the State of Washington. The County of King at all times hereinafter mentioned was and it still is a municipal corporation created and existing under the laws of the State of Washington.

V.

The legislative authority of each of said cities and the Board of County Commissioners of King County were at all the times hereinafter mentioned respectively authorized and empowered by an Act of the Legislature of the State of Washington to grant authority for the construction, maintenance and operation of electric railroads and railways, and, in granting such authority, to prescribe the terms and conditions on which such electric railroad or railway and its appurtenances should be constructed, maintained and operated.

VI.

Pursuant to such authority the following franchises were granted and accepted, and were thereafter duly assigned to the plaintiff in the year 1912, and ever since the plaintiff acquired the same the plaintiff has operated thereunder, to wit:

Ordinance No. 5874 of the City of Seattle, entitled "An Ordinance granting to J. D. Lowman and Jacob Furth, their successors and assigns, a franchise to construct, maintain and operate street railways

in the City of Seattle", approved March 9, 1900, accepted March 31, 1900;

Ordinance No. 7499 of the City of Seattle, entitled "An Ordinance granting to Jacob Furth and M. H. Young, their successors and assigns, a franchise to construct, maintain and operate street railways in the City of Seattle", approved December 4, 1901, accepted December 19, 1901;

Ordinance No. 18572 of the City of Seattle, entitled "An Ordinance granting to The Seattle Electric Company, its successors and assigns, a franchise to construct, maintain and operate a street railway upon certain parts of Alki Avenue, Sixty-third Avenue Southwest and other streets, avenues and places in the City of Seattle", approved June 5, 1908, and duly accepted;

Ordinance No. 14148 of the City of Seattle, entitled "An Ordinance granting to The Seattle Electric Company, its successors and assigns, a franchise to construct, maintain and operate a street railway upon certain parts of Spokane Avenue and certain connections therewith, in the City of Seattle," approved August 15, 1906, accepted August 20, 1906;

6 Ordinance No. 148 of the City of West Seattle, entitled "An Ordinance granting to The Seattle Electric Company, its successors and assigns, a franchise to construct, maintain and operate a street railway on and along certain parts of Railroad Avenue and other streets, avenues and places in the City of West Seattle", approved July 23, 1906, and duly accepted;

Ordinance No. 1020 of the City of Ballard, entitled "An Ordinance granting to The Seattle Electric Company, its successors and assigns, a franchise to construct, maintain and operate street railway extensions connecting with its present street railway system, and extending over certain parts of Railroad Avenue and Fourth Avenue, Crawford Street and other streets, avenues and places in the City of Ballard;

Order of Board of County Commissioners, entitled "Order of the Board of County Commissioners of King County, granting to The Seattle Electric Company, its successors and assigns, the authority right and franchise to construct, maintain and operate an electric railway, together with poles, wires and other appurtenances, upon over, along and across certain public roads and streets", passed August 3, 1906, and duly accepted.

All of such franchises are in full force and effect, and no one thereof will expire prior to midnight of December 31, 1934.

The northerly terminus of the franchise granted by Ordinance No. 7499 of the City of Seattle is the intersection of Jackson Street and First Avenue South in the City of Seattle. The termini of the franchises granted by Ordinance Nos. 14148 and 18572 of the City of Seattle and Ordinance No. 148 of the City of West Seattle and the franchise granted by the Board of County Commissioners of King County are all south of the route described in Ordinance No. 7499 of the City of Seattle. The route described in

7 Ordinance No. 7499 extends from the intersection of First Avenue South and Jackson Street along First Avenue South

) Andover Street. At First Avenue South and Jackson Street, nd thence north to Yesler Way, the tracks of plaintiff are main- ained under Ordinance No. 5874. Two lines of street railway are perated from Yesler Way and First Avenue south and west, and re known as the Alki line and the Fauntleroy line. The line perated under Ordinance No. 1020 of the City of Ballard is known s the Ballard Beach line.

Each franchise granted by the City of Seattle, the City of Ballard nd the City of West Seattle contains substantially the following rovision: "The grantee, its successors and assigns, shall have the ight, at any and all times, to make reasonable rules and regula- ions for the management and operation of the railway lines herein rovided for; provided, that such rules and regulations shall not onflict with the laws of the State of Washington and the Charter nd ordinances of the city." Each of the franchises provide that he grantee shall have the right to charge a passenger fare for ne continuous passage for each passenger not exceeding the sum f five cents, even though a transfer or transfers be necessary. The ranchises granted by the City of Seattle and the City of Ballard rovide that the grantee, its successors and assigns, shall keep on ale for one dollar ($1.00) each, at its main office and power sta- ions in the City of Seattle, commutation tickets, entitling the urchaser to twenty-five rides. Such tickets shall not be trans- errable nor entitle the owner to a transfer, and the Company ay make such reasonable regulations in regard to the issue and se of the same as to enforce such provisions. The franchise ranted by Ordinance No. 1020 of the City of Ballard extends from the intersection of West Fifty-ninth Street and Twenty-fourth Avenue Northwest to Ballard Beach, and the line between Ballard Beach and the intersection of West Fifty-ninth Street and Twenty-fourth Avenue Northwest is known as the Ballard Beach line.

VII.

The plaintiff established a service upon the lines known as the Fauntleroy line and the Alki Point line by which cars would be operated from the intersection of Yesler Way and First Avenue southerly and westerly over all of the routes described in Ordinance No. 7499 and in the franchises for routes south and west of the route described in Ordinance No. 7499. At Yesler Way and First Avenue passengers whose trip originated south of such point, pay- ing five cents, would be entitled to a transfer entitling them to be carried to any point north on plaintiff's street railway system not reached by the originating car; and at Yesler Way and First Avenue passengers whose trip origina[illegible] north of such point, pay- ing five cents, are entitled to a transf[illegible] to the Alki Point line and the Fauntleroy line. Passengers desiring to travel upon the Ballard Beach line are transported so that they can travel upon a four cent ticket to reach the down-town portion of the City of Seattle, and, upon paying a fare of five cents, are entitled to transporta-

tion to any point upon plaintiff's railway system not reached by the original car. Instead of operating through cars upon the Ballard Beach line, plaintiff intended to substitute for the through car a car making a connection with the Ballard Beach line, and at the point of connection allowing passengers to transfer from one car to the other. At Yesler Way and First Avenue the plaintiff instituted a service which allowed the passengers to transfer from cars operated on the Alki and Fauntleroy lines to other cars instead of being carried over the Alki and Fauntleroy lines north of Yesler Way upon the same car. The franchises of the plaintiff under which the lines of street railway were constructed and are now operated do not require the operation of through cars over its franchise routes, but require the owner of such franchises to give to passengers paying the full fare of five cents, and to school children on their way to and from school paying the school fare, transfers at transfer points established by the owner of such franchises, so that such persons shall be carried in the same general direction to any point within the City of Seattle upon the owner's street railway system not reached by the original car, and such franchises provide that persons travelling upon the commutation tickets hereinbefore mentioned shall not be entitled to such transfers.

VIII.

The franchises hereinbefore mentioned which are now owned by the plaintiff are contracts between the plaintiff and the grantors thereof, authorized by the State of Washington, and were granted by such grantors as agents of the State of Washington, and, upon the faith of such contracts, the lines of railway operated thereunder were constructed and are operated.

IX.

In December, 1914, the defendants Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, as the Public Service Commission of the State of Washington, filed a complaint against the plaintiff, wherein it charged that the plaintiff failed to provide a sufficient number of cars with sufficient seating capacity, or to provide or operate a sufficient number of cars to enable it to discharge its duties to the public. The complaint did not designate any of the numerous lines operated by the plaintiff. The plaintiff moved the Commission to make the complaint more definite and certain by stating upon what lines the service was not adequate and sufficient, and, in response to such motion, the Commission furnished a bill of particulars naming the Alki line, the Fauntleroy line and the Ballard Beach line. The plaintiff then answered the complaint and denied each and every allegation thereof. On January 9, 1915, the Commission and the plaintiff stipulated that an order might be entered by the Commission, establishing a certain standard of service, and, in pursuance of such stipulation, the Commission did enter an

order establishing a service sufficient to seat at least seventy-five per cent of all passengers carried during the peak hours of the day on each and every street railway line operated by the plaintiff in the City of Seattle, except on the West Queen Anne counter-weight lines and the cable lines. The order reserved the right to the Commission to change, modify or rescind the order any time, and reserved to the plaintiff the right to move for a revocation of the order at any time. Thereafter the plaintiff complied with the order. On March 15, 1915, the Commission entered upon an investigation of the service furnished by the plaintiff upon the lines of railway mentioned in the bill of particulars. The plaintiff denied the jurisdiction and authority of the Commission to require plaintiff to operate through cars so that persons should be carried over the Ballard Beach line without change to points beyond the termini of the Ballard Beach line, instead of being required to take transfers from the Ballard Beach line to other lines and from other lines to the Ballard Beach line. The plaintiff also denied the jurisdiction and power of the Commission to require the plaintiff to transport passengers
11 upon the Alki and Fauntleroy lines north of the intersection of Yesler Way and First Avenue without change of car and upon a four cent ticket, and asserted the right to require passengers paying the full fare to transfer from the Fauntleroy line and the Alki Point line to other cars, and persons travelling upon other cars and paying the requisite fare to transfer at Yesler Way and First Avenue to the Fauntleroy line and the Alki line; and the plaintiff denied the jurisdiction and power of the Commission to require the plaintiff to operate the Alki and Fauntleroy cars beyond the termini of the routes south of Yesler Way and First Avenue, and denied the jurisdiction and power of the Commission to require the plaintiff to transport passengers beyond the termini of such routes upon four cent tickets.

X.

Ordinance No. 148 of the City of West Seattle, by Section 12 thereof, provided that after the grantee should have acquired the municipal railway line therein mentioned, the grantee should enter into arrangements with the person or corporation owning the West Seattle Ferry, operating from the Ferry Landing at the foot of Madison Street in the City of Seattle, providing such person or corporation should be willing so to do, by which arrangement persons might obtain, for the sum of one dollar ($1.00) commutation tickets entitling the holder to twenty rides on the ferry and on the street railway line then owned by the City of West Seattle, for a continuous passage to or from any point on such city railway line from or to the Ferry Landing in the City of Seattle; and said section further provided that the total fare for such contin-ous passage should be equally divided between the owner of the ferry and the owner of the railway. Section 12 further provided that for the term of
12 three years, or such part of the three year term as the City of West Seattle should continue to own and operate its munic-

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ipal railway, the grantee should exchange transfers with the muni ipal railway. The grantee did make such arrangement and di comply with the terms of such franchise, and the arrangement w continued by the grantee, its successors and assigns, including th plaintiff, after the Ferry line had been acquired by the Port Con mission of Seattle and until the 16th day of March, 1915, at whic time the arrangement and contract expired by limitation. On c about the 15th day of March, 1915, before the defendants as th Public Service Commission of the State of Washington began to r ceive any evidence concerning the Alki line and the Fauntlero line, or either, the Commission, through its Chairman, inquired o the plaintiff whether it intended to continue the contract for the sa of commutation tickets originally required by franchise No. 14 of the City of West Seattle, and upon the plaintiff stating that th contract would expire by limitation on the 16th of March, 191 and that the plaintiff could not afford to renew such contract, and upon the plaintiff denying the jurisdiction of the Commission t require the plaintiff to enter into such contract, the Commission, b its Chairman, stated that the plaintiff should continue the arrange ment until the Commission should have an opportunity to determin its power in respect to such matter, and, upon the plaintiff notifyin the Commission that it could not consent to a continuance of th arrangement, the Commission, by its Chairman, announced that i would then make an order requiring the plaintiff to furnish a sea for every passenger upon the Alki point line, and the Commissio then served upon the plaintiff an order which had been previously prepared, which order was as follows:

13 "Before the Public Service Commission of Washington.

No. 1832.

THE PUBLIC SERVICE COMMISSION OF WASHINGTON, Complainan

vs.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Respondent

Whereas, on March 11, 1915, A. L. Kempster, Manager of th Puget Sound Traction, Light & Power Company, notified the Co mission that the agreement heretofore existing between the Pug Sound Traction, Light & Power Company, Seattle Division, and th Port of Seattle, whereby a joint fare of five cents has been given passengers using the ferry boat operated by the Port Commissio between Seattle proper and West Seattle and the West Seattle c line, known as the Ferry line, will no longer be in force, the agre ment not being renewed by the Puget Sound Traction, Light an Power Company, and

Whereas, On March 4, 1915, the Board of Commissioners of th Port of Seattle were likewise notified that the said contract would n be renewed by the Traction Company, and

Whereas, The elimination of said contract will require patron using the ferry line to use the Alki Point line, and

Whereas, said Alki Point line for a long distance runs through territory not settled, and passengers boarding said cars in the business section of the City of Seattle who do not obtain seats at the time of boarding said cars will be required to stand for a long distance,

Now, Therefore, It is ordered by the Public Service Commission of the State of Washington that if said contract is not renewed by the Puget Sound Traction, Light & Power Company, that the Traction Company furnish to all passengers on cars operated over the Alki Point line with seats, and that if a sufficient number of cars are not now operated to provide all passengers desiring to use said line with seats, said Company is ordered to furnish sufficient additional cars to provide all persons desiring to ride on said Alki line with seats.

This Order is based upon the evidence heard by this Commission in Cause No. 1832, and is a modification of said order, and is based upon the provision in said order to the effect that 'the Commission reserve the power to change, modify or rescind this order at any time,' and shall take effect immediately upon the expiration of said contract and in the event said contract is not renewed.

Dated this 15th day of March 1915.

THE PUBLIC SERVICE COMMISSION
OF WASHINGTON.
C. A. REYNOLDS, *Chairman.*
F. R. SPINNING, *Commissioner.*
A. A. LEWIS, *Commissioner.*"

XI.

The Commission thereafter proceeded to take testimony with respect to the Alki Point line and the Fauntleroy line, and on the 24th day of March, 1915, the Commission made the following order:

"It is therefore Ordered:

1. That the defendant company continue the operations of through service on the Ballard Beach line.

2. That the Alki Point and Fauntleroy Park lines be operated through the City of Seattle on First or Second Avenue as far north at least as Virginia Street.

3. That the defendant company furnish sufficient cars to provide seats for substantially all persons using the Alki Point and Fauntleroy Park lines.

It is understood that a substantial compliance shall be considered a sufficient compliance with this order directing the furnishing of seats for passengers on the Alki Point and Fauntleroy Park lines, the Company not being required to provide for emergency crowds that might apply for seats, but shall provide seats at all times for the usual patronage of said lines, and shall so operate said lines at all times with sufficient cars to provide seats for all patrons, except on extraordinary and unusual occasions."

In making such order the Commission acted under the Public Service Commission Law of Washington.

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XII.

The defendants, constituting the Public Service Commission of the State of Washington, at the time of the making of the first order had never received or heard any testimony or evidence in respect to either the Alki Point or the Fauntleroy Park lines; they had received no evidence in respect to the number of people travelling upon either of said lines, the cost of operating said lines, the cost of either of said lines, the cost of reproduction of either, the value of either, nor any other matter connected therewith. The testimony and evidence thereafter received by the Commission in respect to such lines were undisputed that neither of said lines since their construction had ever earned operating expenses, that they were single track lines, each eight miles in length, extended to a great extent over tide flats where there was no population; that there was no prospect of their being made able to pay the cost of operation so long as the fare was five cents; and that, without allowing anything for interest
16 or depreciation, neither of said lines was then earning, nor was there any prospect of either of such lines earning, a sufficient revenue to pay the cost of operating. The evidence was also undisputed that during the summer months large numbers of persons visited the bathing resort at the end of the Alki line, and that during the rush hours there would frequently be thousands of persons desiring transportation about the same time, and that, owing to the length of haul, the greater number of persons transported by the plaintiff, the greater would be the plaintiff's loss; that to provide sufficient seating capacity for all passengers during the rush hours would require so many cars that transportation would be practically impossible, and that the plaintiff would be bankrupted. The Commission through its Chairman ruled that the franchise provisions were immaterial, and that it made no difference whether the plaintiff was earning operating expenses or not, the Commission would require every passenger desiring to travel upon the lines to be furnished with a seat, except in case of emergency. Neither of the lines of railway mentioned herein are earning or can earn sufficient to pay the cost of transportation of persons thereon, nor can they ever earn sufficient to pay such cost so long as the fare is limited to five cents, even if every person travelling paid a five cent fare.

XIII.

As to the Ballard Beach line, the Commission ruled that notwithstanding the franchise provision allowing the plaintiff to make reasonable rules and regulations not in conflict with law or the ordinances of the City, the Commission would require the plaintiff to carry passengers in through cars and would not permit the plaintiff to require passengers to transfer to or from the Ballard Beach line.

The Ballard Beach line was not and is not earning enough
17 to pay the cost of transporting persons travelling thereon. Requiring passengers to transfer, instead of allowing them to be carried upon a through car, saves in operating cost many thou-

sands of dollars, and the service installed and intended to be installed by the plaintiff had for its object the reduction of unnecessary expense without impairing the service theretofore rendered by the plaintiff upon the Ballard Beach line and upon the Fauntleroy and Alki lines. The cost of operating the Alki and Fauntleroy lines north of Yesler Way to Virginia Street will be upwards of twenty thousand dollars ($20,000) a year, Virginia Street being approximately one mile north of Yesler Way.

XIV.

Approximately from seventy-five to ninety-five per cent of the persons traveling north upon the Alki and Fauntleroy lines proceed north of Yesler Way, and if a through car upon those lines be operated north of Yesler Way to Virginia Street most of such persons will travel upon four cent tickets, and the plaintiff will thereby be deprived of one-fifth of its fare of five cents which it is entitled to charge under its franchises when a passenger desires a transfer, and a transfer is necessary when the Alki and Fauntleroy cars terminate their route at Yesler Way.

XV.

The order of the Commission requires the plaintiff to transport passengers upon, to and over the Ballard Beach line for less than their cost of carriage, and deprives the plaintiff of all compensation for the service rendered. The order of the Commission in respect to the Alki Point line and the Fauntleroy Park line requires the plaintiff to transport passengers at less than the cost of car-
18 riage, and deprives the plaintiff not only of all compensation for the service rendered above the cost of carriage, but deprives the plaintiff of the right to receive the actual cost of carriage. The order of the Commission requiring the plaintiff to operate through cars beyond the termini of the franchise routes in a manner so as to enable a passenger who the plaintiff is entitled to charge five cents to pay for his transportation with four cents, reduces the transportation rate of the plaintiff, and this reduction was made without the Commission having made a valuation either of the lines in question or of the property of the plaintiff, and such order was made notwithstanding the fact that the undisputed evidence established that upon the value of the property used in serving the persons travelling upon the lines in question the plaintiff would receive, under the order of the Commission, no return whatsoever, but that the plaintiff would be prevented from realizing the actual cost of transportation.

XVI.

The order of the Commission denies to the plaintiff the right conferred upon the plaintiff by the contract in the franchise between the plaintiff and the grantor of the franchise of the compen-

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sation therein agreed upon, in violation of Section 10, Article I of the Constitution of the United States; and the order of the Commission requiring the plaintiff to operate through cars beyond the termini of the franchise routes instead of allowing the plaintiff to require passengers to transfer from one car to another, impairs the obligation of the contract between the grantors of such franchises and the plaintiff, in contravention of Section 10, Article I of the Constitution of the United States. The order of the Commission requiring the plaintiff to furnish a seat to every person
19 desiring to travel upon the Alki line and the Fauntleroy line, except in case of emergency, is unreasonable and arbitrary, and was made not because of any circumstances justifying such order, but for the purpose of punishing the plaintiff because the plaintiff declined to enter into a contract which the Commission ruled the Commission had no jurisdiction or power to require the plaintiff to enter into, and such order denied to the plaintiff the equal protection of the law and deprived the plaintiff of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States. The order of the Commission, under the guise of furnishing a convenience to the public, arbitrarily and without any evidence to sustain it, deprives the plaintiff of the management of its property and prevents the plaintiff from operating its property except at the will of the Commission; and the order of the Commission requiring the plaintiff to furnish a seat for every passenger prescribes no standard with which the plaintiff can comply.

XVII.

The final order made by the Commission was made by two of the Commissioners only, the defendant Arthur A. Lewis not being present at the final hearing and not signing the order.

XVIII.

The law of the State of Washington under which the Commission made the order complained of provides that every company which shall violate or fail to comply with any provision of the act or which fails, omits or neglects to obey, observe or comply with any order, rule or any direction, demand or requirement of the Commission shall be subject to a penalty of not to exceed
20 the sum of one thousand dollars ($1000) for each and every offense. Every violation of such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continuing violation thereof every day's continuance thereof shall be and be deemed to be a separate and distinct offense. Every officer, agent or employ of any public service company who shall violate or fail to comply with, or who procures aids or abets any violation by any public service company of any provision of the act, or who shall fail to obey, observe or comply with any order of the commission or any provision of any order of the

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Commission, or who procures aids or abets any such public service company in its failure to obey, observe and comply with such order and provision, shall be guilty of a gross misdemeanor.

If the order of the Commission be enforced the plaintiff will be subjected to penalties which are so great that the plaintiff cannot afford to take the risk of disobeying the order, notwithstanding that the order impairs the obligation of the plaintiff's contract, denies it the equal protection of the law, and deprives it of its property without due process of law, in contravention of the Constitution of the United States and the Fourteenth Amendment thereof; and if the plaintiff obeys the order of the Commission it will lose, during the litigation concerning the validity of the order, upwards of forty thousand dollars ($40,000) before the litigation can be terminated. Thousands of persons will, during the progress of the litigation, travel upon the lines of railway concerned, and wherever a person travels upon a four cent ticket because a through car is operated when the plaintiff is entitled to charge such person five cents and require such person to transfer to another car, the plaintiff will loes one cent for each such person, and, if the order of
21 the Commission should eventually be adjudged invalid, even if such persons could be identified, it would be impossible for the plaintiff to collect from such persons the difference between the four cent ticket and the five cent fare because the cost of collection would exceed the amount involved and the plaintiff would be put to a multiplicity of suits in order to recover such sums if the cost of recovering such sums was not prohibitory.

XIX.

The defendant W. V. Tanner is, by the Act of the State of Washington under which the order of the Commission complained of was made, charged, as Attorney General, with the duty to enforce the provisions of such act and the orders of the Commission, when so requested by the Commission, and, unless restrained by injunction the defendants Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, will request the defendant W. V. Tanner, as Attorney General, to proceed to enforce such order and to prosecute the plaintiff for not obeying the same and for the penalties prescribed by the act for non-compliance with such order.

XX.

The order of the Commission was made and served on the 24th day of March, 1915, and will take effect twenty (20) days thereafter exclusive of the day of service. The plaintiff has not time within which to give notice of its application for a temporary restraining order prohibiting the enforcement of the order of the Commission before such order will take effect, and, unless a temporary
22 restraining order is granted, restraining the defendants from enforcing such order and from proceeding to enforce the

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penalties for non-compliance therewith, the plaintiff will either have to submit to such order or will become liable to the penalties for non-compliance therewith. If the plaintiff obey such order, it will daily lose large sums of money to which the plaintiff will be entitled, and which the plaintiff can never recover, and, in either event, immediate and irreparable injury, loss and damage will result to the plaintiff before notice can be served and a hearing had thereon. If such restraining order should not be granted great and irreparable injury and damage will result to the plaintiff, because the plaintiff and its officers are liable to be subjected to prosecution for the penalties prescribed in the act under which said order was made. In addition to such daamge, the plaintiff, which is now engaged in serving the public, will be obliged to change its method of service, which will impose upon the plaintiff thousands of dollars of increased expense, without the public being furnished with any better or additional service than the plaintiff is now giving, and the plaintiff will be required to give service not justified by the demands of travel upon the lines in question.

XXI.

The value of the matter in dispute exceeds, as to each line mentioned in the order of the Commission, the sum of three thousand dollars ($3,000), exclusive of interest and costs, and the total amount involved in this suit exceeds, exclusive of interest and costs, the sum of forty thousand dollars ($40,000) a year, and the plaintiff will be subjected, if it complies with the order of the Commission, to daily and increasing loss and will be put to daily and increased
23 expense to provide service which will cost more than the plaintiff will receive from performing the service, and for which service the plaintiff will be deprived of all compensation above the cost of service, and will also fail to receive a large proportion of the expense of performing the service.

XXII.

The plaintiff has no plain or adequate remedy at law, and, unless an injunction be granted enjoining the defendants from enforcing the order and proceeding against the plaintiff, the plaintiff and its business will be irreparably injured and damaged.

For as much as the plaintiff can have no adequate relief except in this Court, and to the end, therefore, that the defendants may, if they can, show why the plaintiff should not have the relief herein prayed and make a full disclosure and discovery of all the matters aforesaid, and, according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters in this bill hereinbefore stated, but not under oath, an answer under oath being hereby expressly waived.

The plaintiff prays that a temporary restraining order be issued restraining the defendants Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney Gener

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of the State of Washington, and each of them, from taking any step whatsoever to enforce said order of the Commission or to proceed against the plaintiff, or any of its officers, for non-compliance therewith, until the application of the plaintiff for a temporary injunction restraining the defendants from doing any of said acts during the pendency of this suit can be heard; that upon the hearing of the application of the plaintiff for such temporary injunction a temporary injunction be granted restraining the defendants from doing any of said acts during the pendency of this suit, and that, upon the final hearing and determination of this suit the defendants, and each of them, be permanently enjoined from doing any of said acts, and the order of the Commission hereinbefore set forth be adjudged and decreed null and void; and that the plaintiff have such other and further relief as the equities of the case may require and to your Honor may seem meet.

May it please your Honor to grant unto the plaintiff not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States directed to Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, and W. V. Tanner, as Attorney General of the State of Washington, commanding them, and each of them, on a day certain, to appear and answer unto this Bill of Complaint, and to obey and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,
By JAMES B. HOWE,
HUGH A. TAIT, *Its Solicitors.*

JAMES B. HOWE,
Of Counsel.

STATE OF WASHINGTON,
County of King, ss:

W. H. McGrath, being first duly sworn, on oath deposes and says: I am Vice President of Puget Sound Traction, Light & Power Company; I have read the foregoing Bill of Complaint, know the contents thereof, and believe the same to be true. I have investigated the matters alleged in the Bill concerning the franchises therein mentioned and the terms thereof, and know that those allegations are true. I have conferred with different officials of the Company and have carefully considered the character of the service which the order of the Commission requires the plaintiff to give. I know that it is impracticable for such service to be given upon the Fauntleroy and Alki lines except at a cost, if it could be done at all, which will be confiscatory; but I am sure that it would be practically impossible for the plaintiff to comply with the order of the Commission, regardless of the question of cost. The statements of the Bill concerning the cost of carrying passengers, and the statement that the plaintiff would not derive any compensation

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over and above the cost of carriage, and would be deprived of a p
tion of the actual cost of carriage, I know to be true. I also kn
that the plaintiff will suffer a daily loss which it will be impossi
for the plaintiff ever to recover, if the order of the Commiss
should be obeyed. I have investigated all matters set forth in
bill, and I believe all the allegations are true.

W. H. McGRATH

Subscribed and sworn to before me this 10th day of April, 19

[NOTARIAL SEAL.] EDGAR L. CRIDER,
Notary Public in and for the State of Washington, Residing at Seattle

26 Indorsed: Bill of Complaint. Filed in the U. S. Distr
Court, Western Dist. of Washington, Northern Divisi
Apr. 10, 1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

27 In the District Court of the United States for the West
District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR
Lewis, Constituting the Public Service Commission of the State
Washington, and W. V. Tanner, Attorney General of the St
of Washington, Defendants.

Appearance.

To the Clerk of the above entitled Court:

You will please enter my appearance as solicitor for the plain
in the above entitled suit.

JAMES B. HOWE,
HUGH A. TAIT,
Solicitors for Plaintiff

Address: 860 Stuart Building, Seattle, Washington.

Indorsed: Appearance of Plaintiff. Filed in the U. S. Distr
Court, Western Dist. of Washington, Northern Division, Apr.
1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

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In the District Court of the United States for the Western District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
ARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. Lewis, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Motion for Temporary Injunction.

Now comes the above named plaintiff and, upon the verified Bill Complaint and the affidavits filed therewith, moves the court for temporary injunction restraining the above named defendants, arles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, d W. V. Tanner, Attorney General of the State of Washington, d each of them during the pendency of the above entitled action om enforcing and from taking any steps to enforce the order of e Public Service Commission of the State of Washington made on e 24th day of March, 1915, in that certain proceeding entitled he Public Service Commission of Washington, Complainant, vs. get Sound Traction, Light & Power Company, Respondent, No. 32," which order is as follows:

"It is therefore ordered:

1. That the defendant company continue the operation of through vice on the Ballard Beach line.

2. That the Alki Point and Fauntleroy Park lines be operated rough the City of Seattle on First or Second Avenue as far north, at least, as Virginia Street.

3. That the defendant company furnish sufficient cars to provide seats for substantially all persons using the Alki int and Fauntleroy Park lines.

It is understood that a substantial compliance shall be considered ufficient compliance with this order directing the furnishing of ts for passengers on the Alki Point and Fauntleroy Park lines, company not being required to provide for emergency crowds t might apply for seats, but shall provide seats at all times for usual patronage of said lines, and shall so operate the said lines all times with sufficient cars to provide seats for all passengers ept on extraordinary and unusual occasions."

The plaintiff further moves the court for a temporary restraining er without notice restraining the above named defendants from ng any of said acts until the application of the plaintiff for a porary injunction can be heard, on the ground that the order the Commission hereinbefore mentioned will take effect and be force before the plaintiff can give notice of an application for

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such temporary restraining order and before the application for injunction can be heard, because said order will take effect two days from the 24th day of March, 1915, and immediate and reparable injury, loss and damage will result to plaintiff before tice can be served and a hearing had thereon.

JAMES B. HOWE,
Solicitor for Plaintiff

Indorsed: Motion for Temporary Injunction. Filed in the U. District Court, Western Dist. of Washington, Northern Divisi Apr. 10, 1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

30 In the District Court of the United States for the West District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff
vs.
CHARLES A. REYNOLDS et al., Defendants.

Affidavit of Arthur L. Kempster.

STATE OF WASHINGTON,
County of King, ss:

Arthur L. Kempster, being first duly sworn on oath, deposes a says:

I am and for some months last past have been manager of Seattle Division of the Puget Sound Traction, Light & Power Co pany. Before I became manager I was general superintendent. jurisdiction embraces the City of Seattle. Before the plaintiff quired the street railway properties, which it now operates, they w owned by the Seattle Electric Company. I was superintendent of Seattle Electric Company at the time it sold the street railways the Puget Sound Traction, Light & Power Company of Maine, wh last named company sold them to the plaintiff. I have been c nected with the street railway companies in Seattle for twenty ye last past. I was connected with the plaintiff when the Ball Beach line, the Alki Point line and the Fauntleroy Park line w constructed, and the operation of all of said lines has been under control and the control of G. A. Richardson, the present Superinte ent of Railways.

I have read the bill of complaint in the above entitled case, a I know that the allegations therein contained concerning
31 franchises, the length of haul upon the lines, the terms the franchises, the earnings of the lines, the cost of operati them, the impossibility of complying with the order of the Pub Service Commission, and the fact that the order of the Commissi if it could be complied with, would deprive the plaintiff of a

rn above the cost of performing the service, and would place plaintiff in a position where it would not receive from the operan of the lines sufficient revenue to pay the cost of performing the ice required, are true. I am sure that the loss to the plaintiff in immediate future, if the plaintiff should attempt to comply with order, will exceed, as to each line, upwards of $3,000.00 exive of interests and costs.

was present at the time the Public Service Commission made the ers set forth in the bill of complaint, and all of the allegations he bill in reference to the making of the orders and the manner which they were made are true. I believe that the orders were de not because of any necessity for making them, but for the sons stated in the bill. Almost all of the allegations of the bill within my personal knowledge, and all of such allegations are e. A few of the minor allegations are made upon information l belief, and I believe them to be true. The allegation that if plaintiff should attempt to comply with the order its property l be confiscated and it will be required to give a service which not be given, even if all of the passengers traveling on the lines uld pay the sum of five cents, is true. On Alki Point and Fauntoy lines the haul of almost all of the passengers is upwards of r miles in length, and a large portion of the passengers are hauled en and eight miles. Passengers cannot be carried such a distance for the sum of five cents without loss to the carrier. To give the service required by the order of the Commission upon the Alki Point and Fauntleroy lines would require the plaino take from its other lines such a large number of cars that its vice throughout the city would be crippled, unless the plaintiff uld expend for new cars many thousands of dollars.

ARTHUR L. KEMPSTER.

Subscribed and sworn to before me this 10th day of April, 1915.

[NOTARIAL SEAL.] EDGAR L. CRIDER,
Notary Public in and for the State of Washington, Residing at Seattle.

33 In the District Court of the United States for the Weste
District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS et al., Defendants.

Affidavit of G. A. Richardson.

STATE OF WASHINGTON,
County of King, ss:

G. A. Richardson, being first duly sworn upon his oath, depo
and says:

I am Superintendent of Railways of the above named plainti
I have read the affidavit of Arthur L. Kempster attached to t
bill of complaint. The matters therein stated are true. I have a
read the bill of complaint and all of the allegations of fact there
made are true. I have been connected with the plaintiff compa
for a number of years past, and have had direct control of t
operation of the lines. I know that the service required by t
order of the Commission complained of in the complaint w
not be any better than the service which the company is givi
I know that it is impracticable to comply with the order of t
Commission as to Alki Point and Fauntleroy Park lines, and
know that the plaintiff, upon the amount invested in the lin
will be unable to receive compensation for the service rendered.
the plaintiff should undertake to comply with the order concer
ing Alki and Fauntleroy Park lines, it would be disastrous to t
plaintiff's service in the City of Seattle.

[SEAL.] G. A. RICHARDSON.

Subscribed and sworn to before me this 10th day of April, 191
EDGAR L. CRIDER,
Notary Public in and for the State
of Washington, Residing at Seattle.

34 Indorsed: Affidavits of A. L. Kempster and G. A. Richa
son. Filed in the U. S. District Court, Western Dist.
Washington, Northern Division, Apr. 10, 1915. Frank L. Cros
Clerk, by E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Bond.

Know all men by these presents that Puget Sound Traction, Light & Power Company, a corporation created and existing under the laws of the State of Massachusetts, doing business in the State of Washington, as principal, and Maryland Casualty Company, a corporation created and existing under the laws of Maryland, incorporated for the purpose of becoming surety upon bonds and recognizance- and duly authorized to do such business in the State of Washington, as surety, are firmly held and bound unto the State of Washington in the penal sum of $5,000.00, for which payment well and truly to be made the said principal and surety do hereby bond themselves, and their successors jointly and severally, firmly by these presents.

Sealed with our seals and dated at Seattle in the State of Washington this 10th day of April, 1915.

Whereas Puget Sound Traction, Light & Power Company, the above named plaintiff, has filed its bill of complaint in the District Court of the United States for the Western District of Washington against the above named defendants and in the above entitled suit has prayed that a temporary restraining order be issued restraining the defendants, and each of them, from enforcing and from taking any steps to enforce that certain order of the Public Service Commission of the State of Washington made upon the 24th day of March, 1915, in the matter wherein the Public Service Commission is named complainant and Puget Sound Traction, Light & Power Company is named defendant, numbered in the proceedings before said Commission 1832, and

Whereas the District Court of the United States has made an order granting the restraining order applied for and requiring the plaintiff to enter into a bond to the State of Washington conditioned according to law;

Now, therefore, the condition of this obligation is such that if the above named principal shall well and truly pay such costs and damages as may be incurred or suffered by any person who may be found to have been wrongfully enjoined or restrained by such re-

straining order then this obligation shall be null and void; oth
wise it shall remain in full force and effect.

PUGET SOUND TRACTION, LIGHT &
POWER COMPANY,
By W. H. McGRATH, *Vice-President.*

Attest:
JAMES B. HOWE,
Assistant Clerk.

MARYLAND CASUALTY COMPANY,
By W. M. CALHOUN,
Its Attorney in Fact, and [SEAL.]
By JOHN ROBERTS,
Its Attorney in Fact. [SEAL.]

Approved:
JEREMIAH NETERER,
U. S. Dist. Judge.

Indorsed: Bond. Filed in the U. S. District Court, Western D
of Washington, Northern Division, Apr. 10, 1915. Frank L. Cros
Clerk, by E. M. L., Deputy.

37 In the District Court of the United States for the West
District of Washington, Northern Division.

No. —.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEW
Constituting the Public Service Commission of the State of Wa
ington, and W. V. Tanner, Attorney General of the State of Wa
ington, Defendants.

Restraining Order.

The plaintiff having filed its verified Bill of Complaint in t
above entitled suit accompanied by affidavits of several of its offic
verifying the allegations of the Bill, and having filed its moti
for a temporary injunction restraining the above named defendan
and each of them, during the pendency of the above entitled s
from enforcing or taking any steps to enforce that certain order
the Public Service Commission of the State of Washington, ma
on the 24th day of March, 1915, in that certain proceeding
titled "The Public Service Commission of Washington, Complaina
vs. Puget Sound Traction, Light & Power Company, Responde
No. 1832," and from taking any steps against the plaintiff
non-compliance with such order, and the plaintiff having a
moved that a temporary restraining order be granted, without not
to the defendants, restraining the defendants from doing any
said acts until the application of the plaintiff for such tempor

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njunction can be heard, for the reason that immediate and ir-
eparable injury, loss and damage will result to the plaintiff before
notice can be served and a hearing had thereon, and that
8 the order of the Commission will take effect and the plain-
tiff be proceeded against under said order unless such tempo-
ary restraining order be granted;

And it appearing to the court, from the verified bill and affi-
avits, that on the 24th day of March, 1915, the plaintiff was and
ow is operating certain street railway lines in the City of Seattle
nder franchises constituting contracts between the municipal cor-
orations, consisting of the City of Seattle, the City of Ballard, the
ity of West Seattle and the County of King, granted pursuant to
uthority vested in them by the State of Washington, and that the
efendants, constituting the Public Service Commission of the State
f Washington, on the 24th day of March, 1915, by an order made
n said day impaired the obligation of such contract in violation
f the Constitution of the United States, and by such order deprived
he plaintiff of its property without due process of law, and denied
o it the equal protection of the law in contravention of the 14th
mendment of the Constitution of the United States, which said
rder the defendants, constituting the Public Service Commission
f the State of Washington, made arbitrarily and without any rea-
on therefor except for the purpose of compelling the plaintiff to
nter into a contract with the Port Commission of the City of Seattle,
lthough the Public Service Commission of the State of Washing-
on had no power or jurisdiction to require the plaintiff to enter into
uch contract, and which order further requires the plaintiff to
ansport upon its lines, known as the Ballard Beach line, the Faunt-
roy line and the Alki Point line, passengers for less than the cost
f carrying such passengers and to provide cars sufficient to furnish
every passenger desiring to travel upon such lines, except in
9 cases of emergency, a seat, which order the plaintiff alleges
it is impossible for it to comply with, both on account of
nancial loss which would be incurred and because the order pre-
ribes no standard of service to which the plaintiff can conform;

And it further appearing to the court from said bill and affidavits,
hat if the plaintiff attempts to comply with the order of the Com-
ission complained of the plaintiff will daily lose large sums of
oney and will be deprived, in many instances, of one-fifth of the
wful fare which the plaintiff is entitled to charge its passengers,
nd that such loss will occur before the plaintiff can give notice to
e defendants of an application for a temporary restraining order
nd a hearing be had on such application;

And it also appearing to the court, from said bill and affidavits,
hat the order of the Commission is arbitrary and that it will con-
scate the property of the plaintiff and will deprive the plaintiff of
e management and control of its property in a manner not war-
anted by law, and that immediate and irreparable injury, loss and
amage will result to the plaintiff before notice can be served of the
laintiff's application for a temporary restraining order and a hear-
g can be had thereon;

It is, by the Court, ordered and adjudged as follows:

I.

That because it appears to the court that immediate and irre
rable injury, loss and damage will result to the plaintiff before
plaintiff can give notice of its application for a restraining order a
a hearing be had thereon, restraining the above named defenda
from enforcing or taking any steps to enforce the order of the Pub
Service Commission hereinafter mentioned, and from p
40 ceeding against the plaintiff for non-compliance therewi
the defendants, Charles A. Reynolds, Frank R. Spinni
and Arthur A. Lewis, constituting the Public Service Commission
the State of Washington, and W. V. Tanner, as Attorney General
the State of Washington, and each of them, are hereby restrain
from enforcing and from taking any steps to enforce, and from p
ceeding against the plaintiff for non-compliance with that cert
order of the Public Service Commission of the State of Washingt
made on the 24th day of March, 1915, in the matter entitled "T
Public Service Commission of Washington, complainant, vs. Pu
Sound Traction, Light & Power Company, Respondent, No. 183
which order is as follows:

"It is therefore Ordered:

1. That the defendant company continue the operation of throu
service on the Ballard Beach line.

2. That the Alki Point and Fauntleroy Park lines be operat
through the City of Seattle on First or Second Avenue as far nor
at least, as Virginia Street.

3. That the defendant company furnish sufficient cars to provi
seats for substantially all persons using the Alki Point and Faun
roy Park lines.

It is understood that a substantial compliance shall be consider
a sufficient compliance with this order directing the furnishing
seats for passengers on the Alki Point and Fauntleroy Park lin
the company not being required to provide for emergency crow
that might apply for seats, but shall provide seats at all times for t
usual patronage of said lines, and shall so operate the said lines
all times with sufficient cars to provide seats for all passengers exc
on extraordinary and unusual occasions."

41 II.

The injury which will result to the plaintiff, if the defendants
not restrained without notice, will be that its contract rights will
impaired, that it will be deprived of its property without due proc
of law, and it will be denied the equal protection of the law in c
travention of the Constitution of the United States and the 14
Amendment thereof, and the plaintiff will be deprived of its law
charges in a manner which will prevent it from ever recovering
same, and the plaintiff will be compelled to carry passengers up
its lines without compensation above the cost thereof and for
than the actual cost thereof, and for less than the service to be r
dered by the plaintiff is reasonably worth, and the plaintiff will

e compelled to furnish to the public a service which is not necessary nd is not justified by the circumstances, and thereby the plaintiff ill be irreparably damaged, and such injury and damage being aused by an order of the Public Service Commission of the State of ashington acting pursuant to an act of the legislature of the State f Washington, known as the "Public Utility Law" and creating ich Public Service Commission, is a law of the State of Washing- n in conflict with the Constitution of the United States.

The further injury which will result to the plaintiff, and the fur- er reason why such injury will be irreparable, is that unless the der of the Commission be complied with the plaintiff will become bject to a penalty of $1000.00 a day for each and every failure to mply with such order.

III.

This order shall take effect forthwith, and shall remain in force ntil and inclusive of the 17th day of April, 1915, unless extended r good cause shown.

IV.

The motion of the plaintiff for a temporary injunction shall be ard at the Court Room of the United States District Court, in the ty of Seattle, State of Washington, on April 17th, 1915, at 10:00 clock A. M., and in the meantime a notice of the hearing of the plication for such temporary injunction shall be given to the Gov- nor of the State of Washington, the Attorney General and to harles A. Reynolds, Chairman of the Public Service Commission the State of Washington.

V.

The plaintiff shall execute its bond in the sum of five thousand ollars ($5,000.00) with good and sufficient surety thereon to the ate of Washington, conditioned for the payment of such costs and mages as may be incurred or suffered by any person who may be und to have been wrongfully enjoined or restrained by this restrain- g order.

VI.

The service of this order shall be made by the delivery of a copy ereof to Charles A. Reynolds, Chairman of the Public Service mmission of the State of Washington, and to W. V. Tanner, At- rney General of the State of Washington.

JEREMIAH NETERER,
U. S. District Judge.

Dated April 10th, 1915.

43 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Restrai ing Order on the therein-named Charles A. Reynolds by handing and leaving a true and correct copy thereof with him personally Seattle in said District on the 12th day of April, A. D. 1915.

JOHN M. BOYLE,
U. S. Marshal.
By EDWARD WILLIAMS,
Deputy.

Fees $2.12.

Filed in the U. S. District Court, Western Dist. of Washingto Northern Division, Apr. 12, 1915. Frank L. Crosby, Clerk, by M. L., Deputy.

Indorsed: Restraining Order. Filed in the U. S. District Cou Western Dist. of Washington, Northern Division, Apr. 10, 191 12:47 P. M. Frank L. Crosby, Clerk, by Ed M. Lakin, Deputy.

44 In the District Court of the United States for the Weste District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
PUBLIC SERVICE COMMISSION OF THE STATE OF WASHINGTON et a
Defendants.

Acknowledgment of Service of Bill of Complaint, etc.

Receipt of a copy of Bill of Complaint, Affidavits of Arthur Kempster and G. A. Richardson, Motion for Injunction, Restrainin Order, Notice of Motion for Injunction, in the above entitled actio is hereby admitted April 12, 1915.

W. V. TANNER,
Attorney General of the State of Washington.
By SCOTT Z. HENDERSON,
Assistant Attorney General.

Indorsed: Acknowledgment of Receipt of copies of Bill of Co plaint, etc., by Att'y, Genl. Filed in the U. S. District Court, We ern Dist. of Washington, Northern Division, Apr. 17, 1915. Fran L. Crosby, Clerk, by E. M. L. Deputy.

5 UNITED STATES OF AMERICA:

n the United States District Court for the Western District of Washington, Northern Division.

(In Equity.)

he President of the United States of America to Charles A. Reynolds, Chairman Public Service Commission of the State of Washington; Frank R. Spinning, Arthur A. Lewis, W. V. Tanner, Attorney General of the State of Washington, Greeting:

You are hereby commanded, That you be and appear in said istrict Court of the United States aforesaid, at the Court Room of id Court, in the City of Seattle, on the 30th day of April, 1915, answer a Bill of Complaint filed against you in said Court by uget Sound Traction, Light & Power Company, and to do and reive what the Court shall have considered in that behalf. And this ou are not to omit under the penalty of the law.

Witness the Honorable Jeremiah Neterer, Judge of said Court, nd the seal thereof, at Seattle, Washington, this 10th day of April, 905.

[SEAL.] FRANK L. CROSBY, *Clerk*,
By ED. M. LAKIN, *Deputy Clerk*.

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above entioned suit on or before twenty days from the date of service, cluding the day thereof, at the Clerk's office of said Court, purant to said Bill; otherwise the said Bill will be taken pro confesso.

[SEAL.] FRANK L. CROSBY, *Clerk*,
By ED. M. LAKIN, *Deputy Clerk*.

5 UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify, That I have served the within writ by delivering and leaving a true copy thereof with Scott Z. Henderson, Assistant Attorney General for W. V. Tanner, Attorney General for tate of Washington. Also by leaving with J. H. Brown, Secretary f the Public Service Commission, for Charles A. Reynolds, Chairan of the Public Service Commission of the State of Washington, nd by leaving with J. H. Brown, as Secretary of Public Service ommission for Frank R. Spinning and Arthur A. Lewis, members f the Commission.

Done at Olympia this 12th day of April, 1915.

JOHN M. BOYLE,
United States Marshal,
By JOHN T. SECRIST, *Deputy*.

April 12, 1915.

Fees: $10.70.

Indorsed: Subpœna. Filed in the U. S. District Court, Weste District of Washington, Northern Division, April 15, 1915. Fran L. Crosby, Clerk, by E. M. L., Deputy.

47 United States District Court for the Western District Washington.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER CO., Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR Lewis, Constituting the Public Service Commission of Washi ton, and W. V. Tanner, Attorney General of the State of Wa ington, Defendants.

Appearance.

To the Clerk of the above Entitled Court:

You will please enter our appearance as attorneys for Defenda in the above entitled cause, and service of all subsequent pap except writs and process, may be made upon said Defendants leaving the same with

W. V. TANNER,
Attorney General
SCOTT Z. HENDERSON,
Ass't Att'y General

Office Address, Temple of Justice, Olympia, Wash.

NOTICE.—Attorneys will please endorse their own Filings. Rule

48 Indorsed: Appearance. Filed in the U. S. District Co Western Dist. of Washington, Northern Division, Apr. 1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER CO., Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. Lewis, Constituting the Public Service Commission of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Motion to Dismiss.

Comes now the defendants above named by their attorneys W. V. Tanner, Attorney General, and Scott Z. Henderson, Assistant Attorney General, and move that the bill of complaint herein be dismissed for the reason that the same fails to state sufficient facts to constitute a cause of action, or to entitle the plaintiff to the relief prayed for, or to any relief.

This motion is based upon the records and files herein which are by reference made a part hereof.

W. V. TANNER,
Attorney General.
SCOTT Z. HENDERSON,
Assistant Attorney General.
Attorneys for Defendants.

Indorsed: Motion to Dismiss. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 17, 1915. Frank L. Crosby, Clerk, by E. M. L. Deputy.

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"	161		
Mr. Strum	25		
Benjamin W. Baker	52	56	
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A. A. Smith	61		

Richard D. Baker	64	66
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In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER CO., Plaintiff,

vs.

HARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. LEWIS, Constituting The Public Service Commission of Washington and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Affidavit of P. E. Hall, Jr.

TATE OF WASHINGTON,
County of King, ss:

I, P. E. Hall, Jr., having first been duly sworn on oath, say: hat I am now and ever since December 14, 1914, have been Chief f the Inspection Department of the Public Service Commission f Washington; that pursuant to instructions from the said Public ervice Commission of Washington I did, on or about December 4, 1914, begin an investigation of the service being rendered by e Puget Sound Traction, Light & Power Company, the plaintiff erein, upon the street railway lines of the plaintiff in Seattle, ashington, known as the Alki Line and the Fauntleroy Line; that rior to the 9th day of January, 1915, I made reports of my in- stigation to the said Public Service Commission; that on or about anuary 9, 1915, I was present at a hearing set before the said Pub- Service Commission for the consideration of complaints against e service being rendered by the said Puget Sound Traction, Light Power Company upon certain of its street railway lines in the ty of Seattle; that at said time I had in my possession certain data d reports made by me concerning the service theretofore rendered the said Puget Sound Traction, Light & Power Company on the id Alki Line and Fauntleroy Line and other lines within the city of Seattle; that on or about the 9th day of January, 1915, the Public Service Commission and the Puget Sound Trac- tion, Light and Power Company, the plaintiff herein, had me informal discussion concerning the nature of evidence to be troduced, and other matters concerning the said Alki Line and auntleroy Line, and at said time the stipulation was entered into tween the Public Service Commission and the Puget Sound Trac- on, Light & Power Company whereby the Public Service Com- ission entered an order establishing a tentative service on the lines f the Puget Sound Traction, Light & Power Company in the city f Seattle, excepting the West Queen Anne counter-weight lines and ble lines.

That I am personally familiar with the character of service ren-

dered by the said plaintiff, the Puget Sound Traction, Light & Power Company on the said Alki Line and Fauntleroy Line prior to the 1st day of January, 1915, and that prior to said date, the said Puget Sound Traction, Light & Power Company operated the Alki Line and Fauntleroy Line through the city of Seattle on First and Second Avenues, as far north as Virginia Street.

That prior to said 1st day of January, 1915, I was familiar with the service rendered by the said plaintiff on its line known as the Ballard Beach Line, and that prior to said date the said plaintiff operated through service on the Ballard Beach Line, as directed by the order of the said Public Service Commission dated March 24, 1915, and referred to in the bill of complaint in the above entitled cause; that the said order of the said Public Service Commission relative to the said Ballard Beach Line and Alki Line and Fauntleroy Line requires nothing more of plaintiff than was voluntarily given prior to the 1st day of January, 1915.

That on some date after the 1st of January, 1915, the said Puget Sound Traction, Light & Power Company discontinued its through service on the Alki Line and Fauntleroy Line, and that by
54 reason of said discontinuance the passengers of the said Alki and Fauntleroy Lines, destined for points north of Yesler Way, were compelled to transfer from one car to another at Yesler Way; that passengers taking a car north of Yesler Way and destined for points on the Alki Point or Fauntleroy Park Lines were compelled to transfer at said Yesler Way; that said Yesler Way is in the heart of the business district of the city of Seattle, and that the evidence taken before the Commission at the hearings held prior to the making of said order of March 24, 1915, showed, and I personally know it to be a fact, that during the time of the transfer of passengers at said Yesler Way, crowds of people congregated and large numbers of passengers assembled for the purpose of transferring from the various lines heretofore mentioned; that during the morning and evening hours of each day passengers transferring as aforesaid, were greatly inconvenienced and during the times when storms prevailed and during rainy weather, the said passengers were compelled to transfer without any protection from the storm and rain.

That although the crowds transferring from said cars were orderly, there was a general rush for seats, and many people were deprived of seats in the cars to which they transferred.

The said policy of the said plaintiff in compelling the transferring of passengers at Yesler Way resulted in much inconvenience and discomfort to the public; that at said Yesler Way several of the principal business streets of the city of Seattle converge and there is much traffic aside from the street car traffic, consisting of automobiles, busses, teams, etc., which makes the said transferring of passengers at said point not only inconvenient, but dangerous.

That insofar as I have stated that the order of the Public Service Commission, heretofore referred to as having been made March 24, 1915, does not require of plaintiff any more than what plaintiff voluntarily gave prior to said order, the said statement
55 refers to the running of cars on the Alki and Fauntle

ines through the city of Seattle north of Yesler Way, and to the nning by the plaintiff of other cars on the Ballard Beach Line, d it does not refer to that part of the order of the Public Service ommission which requires the plaintiff to provide seats for sub-ntially all persons using the Alki Point and Fauntleroy Park ines.

Dated this 16th day of April, 1915.

P. E. HALL, JR.

Subscribed and sworn to before me this 17th day of April, A. D. 915.

[SEAL.] BENJ. S. OHNICK,
Notary Public.

Indorsed: Filed in the U. S. District Court, Western Dist. of ashington, Northern Division, Apr. 17, 1915. Frank L. Crosby, erk, by E. M. L. Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 60.

In Equity.

PUGET SOUND TRACTION, LIGHT & POWER CO., Plaintiff,
vs.
HARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, Constituting the Public Service Commission of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Affidavit of Chas. A. Reynolds.

TATE OF WASHINGTON,
County of King, ss:

I, Charles A. Reynolds, being first duly sworn on oath, say that am one of the defendants above named; that I am Chairman of the ublic Service Commission of the State of Washington; and at all nes herein mentioned was chairman as aforesaid; that at the aring before the said Public Service Commission, conducted in attle, Washington, March 22, 1915, at which hearing the plaintiff s represented by counsel, testimony was introduced showing that e cars on the Alki and Fauntleroy Park Lines, owned by the aintiff herein, were crowded, and that there were not a sufficient mber to accommodate the traffic on said lines; that the testimony rther showed that prior to January 1st, 1915, the Plaintiff herein d been operating its Alki and Fauntleroy Park lines north of sler Way without transfer; that the plaintiff had also been oper-ng through cars on the Ballard Beach Line; that the testimony troduced at said hearing showed much inconvenience to passen-

gers and the public by reason of the discontinuance of the runnin
of through cars on the Alki, Fauntleroy and Ballard Beach Line
as will appear by a copy of the testimony at said hearing here
annexed and made a part hereof; that at said hearing th
57 Public Service Commission invited the said plaintiff to sho
to this Commission whether or not the operation of throug
cars and the furnishing of sufficient cars on the Alki Point an
Fauntleroy Park Lines to provide seats for substantially all perso
using said lines, would require the company to impair or use part
its necessary invested capital in order to furnish proper service to th
public; that the plaintiff failed and refused to make any showin
as requested, and refused to permit the said Public Service Commi
sion to investigate valuation reports made to said plaintiff, as w
appear by a copy of the testimony taken at said hearing which
hereto annexed and made a part hereof;

That the said order of the Public Service Commission referr
to in plaintiff's bill of complaint as having been entered on Marc
24, 1915, requires nothing of the plaintiff that plaintiff was n
giving in the way of service prior to the 1st day of January, 191
save and excepting that said order requires plaintiff to furnish suf
cient cars to provide seats for substantially all persons using the Al
Point and Fauntleroy Park Lines; that the said Public Servi
Commission never has refused to permit the said plaintiff to char
a reasonable and sufficient fare for the carrying of passengers up
its lines within the City of Seattle, as will appear by a copy of th
opinion attached hereto and made a part hereof.

Dated at Seattle, Washington, this 16th day of April, 1915.

C. A. REYNOLDS.

Subscribed and sworn to before me this 17th day of April, 1915.

[SEAL.] BENJ. S. OHNICK,
Notary Public.

Indorsed: Filed in the U. S. District Court, Western District
Washington, Northern Division, Apr. 17, 1915. Frank L. Crosb
Clerk, by E. M. L. Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER CO., Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. Lewis, Constituting the Public Service Commission of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Motion to Dismiss.

STATE OF WASHINGTON,
County of King, ss:

I, N. W. Bolster, being first duly sworn on oath, say that I am shorthand reporter; that on the 22d day of March, 1915, I was employed by the Public Service Commission of Washington to take shorthand notes the hearing before the said Commission in the matter of complaint against the street car service of the Puget Sound Traction, Light & Power Company; that at said time I took shorthand notes of all of said testimony and that I have had transcribed the said shorthand notes upon a typewriter into longhand, and that the annexed is a full, true and correct copy of the testimony presented to said Public Service Commission at said hearing.

N. W. BOLSTER.

Subscribed and sworn to before me this 16th day of April, A. D. 1915.

[SEAL.] C. H. WINDERS,
Notary Public in and for the State of Washington, Residing at Seattle.

Before the Public Service Commission of Washington.

No. 1832.

THE PUBLIC SERVICE COMMISSION OF WASHINGTON, Complainant,
vs.
PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Respondent.

On December 18, 1914, the Public Service Commission of Washington on its own motion filed a complaint against the Puget Sound Traction, Light & Power Company (herein for convenience designated as "the company") charging, among other things, that

the service, facilities and equipment provided and used by t
company in the operation of its street railroad system in the City
Seattle were inadequate and insufficient to enable it to prompt
and properly receive, transport or deliver persons received by
for transportation, or to promote the comfort and convenience
its patrons and the public, in that the company has failed to pr
vide a sufficient number of cars with sufficient seating capacity,
to provide and operate a sufficient number of cars or to so arran
its schedule for the operation of said cars to maintain a reliab
steady and uniform service with sufficient frequent and unifor
periods between cars to enable it to discharge its duties to t
public.

Thereafter a citation in regular form was served upon the d
fendant company fixing December 28, 1914, at 9.30 o'clo
60 A. M. at room 232 Henry Building, as the time and pla
for hearing evidence on the matter set forth in the co
plaint.

The defendant company moved to make the complaint mo
definite and certain by stating upon what lines the company fail
to provide a sufficient number of cars with sufficient seating c
pacity.

In response to this motion the Commission on December
1914, furnished the company with a bill of particulars in wh
the street car lines upon which the company's schedules are
sufficient to maintain a reliable, steady and uniform service, w
enumerated. Among the lines enumerated were Alki Po
Fauntleroy Park, Ballard Beach and Ballard North.

On January 9, 1915, the case came on for hearing, and the co
pany then stipulated that an order might be entered by the Co
mission establishing a certain standard of service, and in pur
ance of said stipulation an order was entered establishing a serv
sufficient to seat at least seventy-five per cent of all passengers c
ried during the peak hours of the day on each and every str
railway line operated by the company in the City of Seattle,
cept on the West Queen Anne counterweight line and the ca
lines. Said order also provided that "the Commission reserves t
power to change, modify, or rescind this order at any time."

That thereafter the company, without notice to the Commis
published in the daily press a notice that it would discontin
service on through cars on Twenty-fourth Avenue northwest
Fifty-ninth Street, on what is known as the Ballard Be
61 line, and would substitute a "shuttle" service instead of t
regular through service. The company also notified
Commission by letter that it would discontinue the joint ser
with the Seattle Ferry operated by the Port Commission.

Upon such information the Commission modified its for
order by directing the company to maintain its service and sched
on said Ballard Beach line without change or modification u
after hearing, and designated March 15, 1915, at 9.30 o'c
A. M. at the Assembly Room of the New Chamber of Comm
in the City of Seattle, as the time and place for the compan

ow cause why it should be permitted to discontinue the operation
f any cars or substitute a shuttle service for the through service
said Ballard Beach line.

On March 15, 1915, the company appeared and objected to the
risdiction of the Public Service Commission to issue the rule to
ow cause, and denied each and every allegation set forth in the
ler to show cause, and alleged that it promptly transported all
rsons desiring transportation upon its lines, and alleged that the
e, referring to the Ballard Beach line, was constructed under Or-
nance No. 1020 of the City of Ballard, by the terms of which ordi-
nce the company itself had the right to make reasonable rules
d regulations for the government and operation of its road and
e management and operation of its property, not in conflict with
e laws of the State of Washington or the charter and ordinances
f the City of Seattle.

On said March 15, 1915, the defendant company ap-
peared by its counsel James B. Howe, Esq., the City of
Seattle by its assistant corporation counsel Ralph S. Pierce,
sq., and representatives of the patrons of the Alki Point and
auntleroy Park lines by James A. Dougan, Esq., John B. Shorett,
sq., and Walter B. Beals, Esq.; whereupon the company, by its
torney Mr. Howe, represented that it was not then ready to pro-
d with the hearing of testimony on the Alki Point and Fauntle-
y Park lines, but was ready to proceed in the Ballard Beach mat-
r.

The hearing in relation to the Alki Point and Ballard Beach
nes was thereupon continued to March 22, 1915, at the hour of
30 o'clock A. M. and the Commission proceeded with the taking
f testimony in relation to the Ballard Beach line, and after having
eard the testimony then ready, the Commission adjourned to take
rther testimony in relation to the Ballard Beach, Alki Point
nd Fauntleroy Park lines on Monday, March 22, 1915, at 9.30
clock A. M.

On said last named date, to wit, March 22, 1915, the same parties
l appeared by their counsel, and the Port Commission, by its
ounsel C. G. France, Esq., and further evidence was introduced on
e part of the defendant company, the Commission, the City and
e patrons of the lines in question, in relation to the service thereon,
nd the cause being finally submitted and the Commission being
w fully advised in the premises, finds the facts to be:

1. That the Ballard Beach line operates from Yesler Way and
Vestern Avenue in the City of Seattle to its terminus at Ballard
Beach, in the old city of Ballard, now a part of the city
of Seattle; that the proposed change is to operate a shuttle
service from the termination of said line at Ballard Beach,
subdivision of the city of Seattle, to the intersection of West
ifty-ninth Street and Twenty-fourth Avenue Northwest, in the
d city of Ballard, now a part of the city of Seattle; that at the
tersection of these two streets the Ballard Beach line meets the
remont-Ballard line; that the Fremont-Ballard line serves many
eople north of the intersection of these two streets and ar-

rives at the intersections of said streets during the pea
hours usually crowded with passengers; that passengers on th
shuttle service, transferred to the Fremont-Ballard line at said poin
to be carried to the business section of the city of Seattle, wi
rarely be able to obtain seats during the peak hours in the mornin
when said patrons of said line are being transported to the busine
section of the city of Seattle where they are employed; that suc
service will, therefore, be inconvenient and unsatisfactory to th
patrons of said line, and consequently, insufficient and inadequat
that in addition to the inconvenience, insufficiency and inadequac
of said service, the elimination of through cars over the Ballar
Beach line will result in an inadequate and insufficient servic
to the patrons of said line living between what is designated as th
old city of Ballard, now a sub-division of the city of Seattle, an
the business section of the city of Seattle.

2. The Commission finds that the Fauntleroy Park line and th
Alki Point line are operated through a long distance o
64 sparsely settled territory, over what is known as the tid
flats, and that passengers boarding said cars at Pione
Square, in the business section of the city of Seattle, who do no
obtain seats, are required to stand for a distance of, approximatel
four miles, or for about thirty minutes, and that such requiremen
is unreasonable, burdensome and oppressive; that the changing o
the starting point of said cars to Pioneer Square from Virgin
Street, where they formerly started, has resulted in a congestion a
the point of starting, so that the passengers, in order to obtain sea
in said cars, are required to engage in an unseemly scramble, th
such a condition is dangerous, unreasonable, burdensome and op
pressive. That said company does not furnish a sufficient numbe
of cars on the Alki Point line or on the Fauntleroy Park line t
fairly, reasonably, sufficiently and adequately serve the patrons o
said lines.

2. The Commission finds the net earnings of the Defendan
company, not including depreciation and taxes, for the year end
ing February 28, 1915, to be the sum of $1,665,167.87. The de
fendant company refused to produce the only valuations made o
its property by experts, and failed to show that there was not
sufficient return from its property to pay the operating expense
taxes and depreciation and leave a balance, and from the evidenc
introduced the Commission is of the opinion, and finds the fac
to be, that after performing the service hereinafter ordered by th
Commission, the defendant company will have net return
65 over and above its operating expenses, taxes and depreciatio
From the foregoing the Commission finds that to co
tinue the through service over the Ballard Beach line and furnis
sufficient cars to provide seats for substantially all persons desirin
to use the Fauntleroy Park line or the Alki Point line, will no
require a diminution or use of the company's capital, but, on th
contrary, the company will earn as net profits large sums in exce
of operating expenses, depreciation and taxes and at the same tim
furnish such through service on the Ballard Beach line and furnis

fficient cars to provide seats for substantially all of the patrons of e Alki Point and Fauntleroy Park lines.

It is Therefore Ordered:

1. That the defendant company continue the operation of rough service on the Ballard Beach line.

2. That the Alki Point and Fauntleroy Park lines be operated rough the city of Seattle on First or Second Avenue as far north least, as Virginia Street.

3. That the defendant company furnish sufficient cars to pro- le seats for substantially all persons using the Alki Point and untleroy Park lines.

4. It is understood that a substantial compliance shall be con- ered a sufficient compliance with this order directing the furnish- g of seats for passengers on the Alki Point and Fauntleroy Park es, the company not being required to provide for emergency wds that might apply for seats, but shall provide seats at all times for the usual patronage of said lines, and shall so oper- ate the said lines at all times with sufficient cars to pro- vide seats for all patrons, except on extraordinary and un- ual occasions.

The defendant company contends: First. That the Public Ser- e Commission has no jurisdiction to make the foregoing order. cond. That the right to regulate is vested in the company by its nchise, and Third. That to furnish adequate and sufficient serv- will not permit a sufficient return to the company.

In the light of past events, the first and second contentions of e company do not come with good grace.

In the case of "Seattle Electric Company vs. The City of Seattle," Wash., 203, where the jurisdiction of the city to regulate service s contested by the company on the ground that the Public Service mmission alone had jurisdiction, we find the following:

"The appellants (the City of Seattle) concede that these pro- sions of the law endow the public service commission with power regulate and control street railways. But it is contended that, til such time as the public service commission shall act, the city uncil retains jurisdiction to regulate street railways as to the mber of passengers which a car may carry and the schedule in cordance with which cars shall be operated. In other words, the y may act until the public service commission shall have acted; t, when the latter has issued an order covering the same sub- t-matter, then the action of the city council becomes nugatory d of no force and effect.

The respondent (the Seattle Electric Company) contends that e public service commission law vested in the public service com- ssion jurisdiction over all matters covered by the ordinance, and y previous delegation of power to the city over the same subject- tter was thereby revoked; or, to state it in another way, that the risdiction of the city as to such matter was divested by the enact- ent of the statute, and subsequent to the time when the statute ent into effect, the city had no power to act; and since the ordinance

was enacted subsequent to the time when the law took eff
67 the city acted without power, and the ordinance was th
fore void."

In determining these contentions between the city and the c
pany Justice Main of the Supreme Court said:

"Considering the entire statute, and especially the excerpts qu
therefrom, it seems plain to us that it was the legislative in
that the power and authority to regulate public utilities was ve
in the public service commission from and after the time the
took effect; and that, when the law became effective, it revoked
power of the city to legislate upon the subject-matter covered
the ordinance."

See also "State ex rel. Webster vs. The Superior Court for K
County," 67 Wash., 37, from which case we quote the followi

"Without exception, courts have, in the absence of positive li
tation, upheld the authority of the state as against municipal
porations when dealing with the problems of public service,
have been careful to warn against the danger of admitting a divi
authority either to contract or control."

This, it would seem, disposes of contentions one and two, w
out commenting upon the decisions cited by Mr. Howe, which
clearly distinguishable.

The company also contends that to perform the service requi
in the foregoing order will prevent the company from earnin
sufficient return on its investment.

Section 9 of Chapter 117 of the Session Laws of 1911 provide

"Every common carrier shall construct, furnish and provide s
adequate and sufficient service, facilities * * * to enable
to promptly, expeditiously, safely and properly receive, transp
and deliver all persons or property, etc."

To furnish adequate and sufficient service facilities to enable
to promptly, expeditiously, safely and properly transport passeng
is the primary duty of the respondent. This duty is
68 dependent on the ability of the company to earn a return
its investment. It is the performance of this duty wh
entitles the respondent to a return on its investment.

The service for which the company is entitled to receive co
pensation in the form of a return on its investment is the serv
defined by law, that is adequate and sufficient.

The law does not authorize the respondent to demand a retu
on its investment for providing a service which is fifty per c
adequate and sufficient, or anything less than one hundred p
cent adequate and sufficient.

The measure of compensation to which respondent may be e
titled is not graduated according to the degree of proficiency wi
which it discharges its duty.

The law does not authorize respondent to demand one-half of
reasonable return on its investment for furnishing a service whi
is fifty per cent adequate and sufficient. Hence a proceeding su
as this, to require respondent to provide adequate and sufficie
service facilities, is not a proceeding affecting rates. It is not a

mbent upon the Commission to make a valuation of respondent's
operty before requiring the respondent to furnish adequate and
fficient service facilities. Respondent may not defend against
ch requirement by showing that the particular service demanded
not profitable, and in this case it is no defense for the company
show that a particular line of its system is or is not profit-
able.

Wyman on "Public Service Corporations," Vol. 1, Sec. 809.
Platt vs. Le Cocq, 150 Fed., 391.
Mayor vs. Dry Dock E. B. & B. R. Co., 133 N. Y., 104; 33 Northeastern, 503.
Atlantic Coast Line R. R. vs. North Carolina Corporation Commission, 206 U. S., 1.
Washington P. & C. Ry. Co. vs. Magruder, 198 Fed. 218.

It will be seen from an examination of the foregoing authorities,
at if the performance of the service does not require the company
use any of its capital therefor, that the Commission has the
wer to order the service described in the statute, that is adequate
d sufficient service. In this case no showing was made by the
fendant company that its return was not sufficient to provide
is service. The sole question is the convenience of the public,
nited only by the constitutional limitation of confiscation. It
not contended that it would be just or lawful to specify an un-
asonable service, but a just and reasonable service that considers
e frailties of women and others who of necessity are required to
e street cars, should at all times be required and furnished.
A service which requires patrons, in order to reach their homes at
asonable hours and who are not successful in a mad rush for
ats, to stand for long distances, is neither safe, adequate or suf-
ient.
The idea has been permitted to grow up that street car companies
all not be required to furnish comfortable accommodations for
l their passengers; that in order to pay interest on bonds, divi-
nds on stock and other charges, men and women must be sub-
cted to inconvenience and the unseemly conditions, which the
testimony in this case disclose, where seats are provided only
for those who are successful in the rush to secure them. This
Commission is not in sympathy with such idea.
As an example of the conditions presented by this case, we quote
om the uncontradicted testimony of Mr. Beals:
"Now, those cars of course being pay-as-you-enter cars, the steps
e rather narrow and they are high, and they are constructed so
at but one person can get up at the time. There is a little spare
om, I suppose to take care of large people, but only one person
n get into the car at a time. The gates, as they open, flare out
st a trifle, so that two people can stand in the gates, but only one
rson can get up the steps. People are swept in there in a crowd,
d I have seen women and children and men seriously discom-
oded. I would not say, possibly, actually hurt, but crowded in
ere with the crowd pushing behind them—it is like pushing them

in the big end of a funnel and trying to jam them through t small end * * *

For an old person, an old man or an old lady, or anybody incon moded with children, or suffering from any physical disability—the have no business in that crowd. It is a positive menace to ther I think, as well as a very, very serious inconvenience. I know th frequently I do not like to take my wife in that crowd, and no la should get in there. In the old days I used to walk a block or tw down First Avenue and ride up. At night, once in a while you w be jammed in beside a man who has been drinking a little, and was altogether very objectionable."

Many other responsible citizens gave testimony as *in* like cond tions, and the Commission feels it to be its imperative duty to elim nate the cause of such conditions and prevent their recurrence, b enforcing better service.

The Commission has ordered a valuation of the company's pro erty. If it should appear upon the valuation that the company ca not provide adequate and sufficient service and at the same time ea a reasonable return upon its investment, the Commissi
71–361 will increase its return. On the other hand, if it appea from a valuation of the company's property that the ra now charged for adequate and sufficient service is excessive, t Commission will order the rate reduced.

THE PUBLIC SERVICE COMMISSION OF WASHINGTON,
By C. A. REYNOLDS, *Chairman.*
FRANK R. SPINNING, *Commissioner.*

* * * * * * *

362 In the District Court of the United States for the Weste District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS et al., Defendants.

Stipulation.

It is hereby stipulated between the undersigned that paragra XII of the Bill is hereby amended by changing the period at t end of the paragraph, on line 22, page 15, into a comma, and addi the following:

"such fare being less than a reasonable rate and less than the va of the service rendered."

Dated at Seattle, Washington, April 17, 1915.

JAMES B. HOWE,
Solicitor for Plaintiff.
W. V. TANNER,
SCOTT Z. HENDERSON,
Solicitors for Defendants.

COPY BOUND CL

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 17, 1915. Frank L. Crosby, Clerk, E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS et al., Defendants.

This is to certify that I, Irvin W. Ziegaus, am Secretary to the Governor of the State of Washington, the Honorable Ernest Lister, and am duly authorized to accept service of original papers for and behalf of the Governor, and I hereby acknowledge due and regular service upon the Governor on the 12th day of April, 1915, Notice of a Motion for an Injunction in the above entitled cause for hearing April 17, 1915.

IRVIN W. ZIEGAUS,
Secretary to the Governor of the State of Washington.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. LEWIS, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Notice.

Honorable Ernest Lister, Governor of the State of Washington; Honorable W. V. Tanner, Attorney General of the State of Washington; Honorable Charles A. Reynolds, Frank R. Spinning, and Arthur A. Lewis, Constituting the Public Service Commission of the State of Washington:

You, and each of you, are hereby notified that the Puget Sound Traction, Light & Power Company, the above named plaintiff, has filed its verified bill of complaint, supported by affidavits, in the District Court of the United States for the Western District of Washington, Northern Division, against Charles A. Reynolds, Frank R.

LOSE IN CENTER

Spinning and Arthur A. Lewis, constituting the Public Service Com
mission of the State of Washington, and W. V. Tanner, as Attorne
General of the State of Washington, praying that the order of th
Public Service Commission of the State of Washington, made on th
24th day of March, 1915, in reference to the Ballard Beach lin
Alki Point Line and the Fauntleroy Park Line of the above name
plaintiff be adjudged null and void, and the enforcement of su
order by the Public Service Commission and the Attorne
365 General be perpetually enjoined.

In such suit the plaintiff has moved for the temporary i
junction to be in effect during the pendency of the suit enjoinin
the Public Service Commission and the Attorney General from pr
ceeding to enforce such order and from proceeding against the plai
tiff for non-compliance therewith. The motion for such tempora
injunction will be heard in the United States District Court at th
Court House thereof, in the City of Seattle, King County, State
Washington, on the 17th day of April, 1915, at 10.00 o'clock A.

You are further notified that a temporary restraining order h
been granted in the above entitled suit restraining the Public Servi
Commission and the Attorney General of the State from proceedi
to enforce such order, and from proceeding against the plaintiff f
non-compliance therewith until the hearing of the motion of t
plaintiff for a temporary injunction.

JAMES B. HOWE,
HUGH A. TAIT,
Solicitors for Plaintiff.

Indorsed: Notice for Temporary Injunction. Filed in the U.
District Court, Western Dist. of Washington, Northern Divisi
Apr. 17, 1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

366 In the District Court of the United States for the Weste
District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff.

vs.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEW
Constituting the Public Service Commission of the State of Wa
ington, and W. V. Tanner, Attorney General of the State
Washington, Defendants.

Opinion.

James B. Howe and Hugh A. Tait, of Seattle, Washington, for
laintiff,
W. V. Tanner and Scott Z. Henderson, of Olympia, Washington,
r defendants.

efore Gilbert, Circuit Judge, and Rudkin and Neterer, District
Judges.

UDKIN, *District Judge:*

This suit was instituted by the plaintiff to restrain the defendants
om enforcing an order of the Public Service Commission of the
ate of Washington. The plaintiff is a citizen of the State of Massa-
husetts and the defendants are the Public Service Commissioners
nd the Attorney General of the State of Washington, and citizens of
at State. The jurisdiction of this court is invoked on the ground
f diversity of citizenship, and on the further ground that the order
mplained of impairs the obligation of certain contracts, and de-
ives the plaintiff of its property without due process of law and
enies to it the equal protection of the laws, in violation of the
Constitution of the United States. The order is as follows:

"It is therefore ordered:

1. That the defendant company continue the operation
through service on the Ballard Beach line.

2. That the Alki Point and Fauntleroy Park lines be operated
rough the City of Seattle on First and Second Avenue, as far
rth at least as Virginia Street.

3. That the defendant company furnish sufficient cars to provide
ats for substantially all persons using the Alki Point and Fauntle-
y Park lines.

It is understood that a substantial compliance shall be considered
sufficient compliance with this order directing the furnishing of
ats for passengers on the Alki Point and Fauntleroy Park lines,
e Company not being required to provide for emergency crowds
at might apply for seats, but shall provide seats at all times for
e usual patronage of said lines, and shall so operate said lines at
l times with sufficient cars to provide seats for all patrons, except
extraordinary and unusual occasions."

A brief statement of the case, as presented at the hearing of the
ppellant for an interlocutory injunction, is necessary to a proper
nderstanding of the requirements of this order and the objections
ged against it.

The plaintiff owns and operates a street railway system in the
ty of Seattle and is the assignee of numerous franchises for Street
ilways heretofore granted to its predecessors in interest by the City
Seattle, the City of West Seattle, the City of Ballard, and King
unty. The Ballard Beach line referred to in the order is operated
nder Ordinance No. 1020 of the City of Ballard, entitled "An
rdinance granting to the Seattle Electric Company, its successors

and assigns, a franchise to construct, maintain and operate stre
railway extensions connected with its present street railway syste
and extending over certain parts of Railroad Avenue and Four
Avenue, Crawford Street and other streets, avenues and places
the City of Ballard." For some time prior to the promulgation
the order in question the cars operated on the Ballard Beach li
ran beyond the franchise limit and into the business district of t
City of Seattle, but immediately before the promulgation of t
order this service was discontinued and passengers were required
transfer to other lines at the end of the franchise limit of the Balla
Beach line in order to reach the down town districts. The effe
of the order was therefore to require the plaintiff company
368 reinstate the through service on the Ballard Beach line.

The Alki Point line and the Fauntleroy Park line, eac
about eight miles in length, are operated under franchises heret
fore granted to the predecessors in interest of the plaintiff by t
City of Seattle. The northerly limit of these franchises is at
south of Yesler Way. For a period of two or three years prior
the date of the order in question the cars operating on these tw
lines ran north of Yesler Way on First or Second Avenue to Vi
ginia Street, a distance of approximately a mile. Shortly prior
the promulgation of the order this through service was discontinue
and passengers going north of Yesler Way were required to transf
to other cars at that point and a like transfer was required at the sam
point by passengers going in the opposite direction. The effect
the order was, therefore, to compel the company to reinstate th
through service over these two lines north of Yesler Way on Fir
or Second Avenue as far as Virginia Street. The uncontradicte
testimony further shows that the two latter lines run for a conside
able distance over the tide flats receiving and discharging but fe
passengers en route, so that a majority of the passengers are carrie
a distance of five or six miles before leaving the cars or reachin
their destination. For this reason, among others, these two lin
have never paid operating expenses and perhaps never will, becaus
the average haul is so long that the more cars operated and the mo
passengers carried the greater will be the loss to the company.
further appears, without substantial contradiction, that for abo
two hours in the morning and two hours in the evening of each da
the cars on these lines are so crowded that from thirty to forty pe
cent of the passengers are compelled to stand up for a period
thirty minutes or more while the cars are traveling a distance
five or six miles.

369 The franchise ordinances of the City of Ballard and th
City of Seattle under which the three lines in question ar
operated provide in substance, that the grantee, its successors and
assigns, shall have the right at any and all times to make reasonabl
rules and regulations for the management and operation of the rai
way lines therein provided for, not inconsistent with the laws o
the State or the charter and ordinances of the city; that the grante
shall have the right to charge a passenger fare of not exceeding fiv
cents for one continuous passage for each passenger; that the
grantee shall keep on sale at its main office and power station

City of Seattle commutation tickets for one dollar each, entitling purchaser to twenty-five rides, but such tickets shall not be nsferable nor entitle the owner to a transfer, and the company authorized to make reasonable rules and regulations to enforce the hibition against transfers.

The first contention on the part of the plaintiff is that the order mpels it to carry passengers on the Alki Point and Fauntleroy nes beyond the franchise limits of these lines, and in effect compels to grant transfers on commutation tickets, in violation of the ntract contained in the franchise ordinances. The order itself is ent as to rates or fares but for the purposes of this case we will sume that it has the effect claimed for it. We are unable to ld assent, however, to the proposition that these franchise ordiances create inviolable contracts between the municipality and the mpany protected by the contract clause of the Federal Constitun. That a city ordinance may constitute a contract within the eaning of the Constitution is well settled, but it is equally well ttled that a municipal corporation cannot barter away the police wer of the State by unalterably fixing rates and fares during the e of a franchise, unless specifically and expressly authorized so to by the supreme legislative authority of the State. Discussing the estion in Home Telephone Co. v. Los Angeles, 211 U. S., 265, 272, the court said:

"Did the city council have the power to enter into a contract fixing, unalterably, during the term of the franchise, charges r telephone service and disabling itself from exercising the charter wer of regulation? If so, was such a contract in fact made? The st of these two questions calls for earlier consideration, for it is eedless to consider whether a contract in fact was made until it is etermined whether the authority to make the contract was vested n the city. The surrender, by contract, of a power of government, hough in certain well-defined cases it may be made by legislative uthority, is a very grave act, and the surrender itself, as well as the uthority to make it, must be closely scrutinized. No other body han the supreme legislature (in this case the legislature of the State) as the authority to make such a surrender, unless the authority is learly delegated to it by the supreme legislature. The general owers of a municipality or of any other political subdivision of the tate are not sufficient. Specific authority for that purpose is reuired. This proposition is sustained by all the decisions of this ourt, which will be referred to hereafter, and we need not delay urther upon this point."

Again,

"The facts in this case which seem to us material upon the ques-ons of the authority of the city to contract for rates to be main-ined during the term of the franchise are as follows: The charter ve to the council the power 'by ordinance * * * to regulate lephone service and the use of telephones within the city * * * nd to fix and determine the charges for telephones and telephone ervice and connections.' This is an ample authority to exercise the overnmental power of regulating charges, but it is no authority to nter into a contract to abandon the governmental power itself. It

speaks in words appropriate to describe the authority to exercise th governmental power, but entirely unfitted to describe the authorit to contract. It authorizes command, but not agreement. Doubtles an agreement as to rates might be authorized by the legislature to b made by ordinance. But the ordinance here described was not a ordinance to agree upon the charges, but an ordinance 'to fix an determine the charges.' It authorizes the exercise of the gover mental power and nothing else. We find no other provision in th charter which by any possibility can be held to authorize a contra upon this important and vital subject."

To the same effect see, Portland Ry. Light and Power Co. v. Ci of Portland, 201 Fed., 119.

The powers of the City of Seattle are no more specific or comp hensive in this regard than the powers conferred on the Cities of L Angeles and Portland in the cases cited, and little can be added what has been said by Mr. Justice Moody and Judge Bean in the cases.

Section 9 of the Public Service Commission Act of March 18, 191 (Laws of 1911, page, 546), provides that:

371 "All charges made for any service rendered or to be re dered in the transportation of persons or property, or in co nection therewith, by any common carrier, or by any two or mo common carrier-, shall be just, fair reasonable and sufficient.

"Every common carrier shall construct, furnish maintain an provide safe, adequate and sufficient service facilities, trackage, s ings, railroad connections, industrial and commercial spurs an equipment to enable it to promptly, expeditiously, safely and pro erly receive, transport and deliver all persons or property offered or received by it for transportation, and to promote the safety, healt comfort and convenience of its patrons, employees and the public.

"All rules and regulations issued by any common carrier affecti or pertaining to the transportation of persons or property shall just and reasonable."

Section 53 of the same Act provides that:

"Whenever the commission shall find, after a hearing had up its own motion or upon complaint, as herein provided, that the rat fares or charges demanded, exacted, charged or collected by any co mon carrier for the transportation of persons or property within t state or in connection therewith, or that the regulations or practi of such common carrier affecting such rates are unjust, unreasonab unjustly discriminatory, or unduly preferential, or in any wise violation of the provisions of law, or that such rates, fares or char are insufficient to yield a reasonable compensation for the serv rendered, the commission shall determine the just, reasonable or s ficient rates, fares or charges, regulations or practices to be thereaf observed and enforced and shall fix the same by order as hereinaf provided.

"Whenever the commission shall find, after such hearing, that t rules, regulations, practices, equipment, appliances, facilities or se ice of any such common carrier in respect to the transportation persons or property are unjust, unreasonable, unsafe, improper, i

equate or insufficient, the commission shall determine the just, sonable, safe, adequate, sufficient and proper rules, regulations, ctices, equipment, appliances, facilities or service to be observed, rnished, constructed or enforced and be used in the transportation persons and property by such common carrier, and fix the same its order or rule as hereinafter provided."

Ample authority for the order of the commission is found in these tions, and the franchise ordinances of the City of Seattle do not nd in the way of its exercise.

The next contention of the plaintiff is that the order deprives it its property without due process of law and denies to it the equal tection of the laws. In this connection the order has a double ect. First, it requires the street railway company to furnish ade- ate facilities to the public, and, second, it prescribes rates or fares for transportation. In the former aspect the order may be 2 valid, even though the company suffers some incidental loss in complying therewith, because a public service corporation ay always be required to perform its charter duties to the public, e Mo. Pac. Co. v. Kansas, 216 U. S., 262, and cases there cited.

In its second aspect it may be conceded that the order is invalid it amounts to a confiscation of the plaintiff's property, or denies to a reasonable return on its invested capital, but the order was made ithin the acknowledged jurisdiction of the commission and the tes established are presumed to be reasonable and just under all e authorities, State and Federal, until the contrary is made to ap- ar. Does the record in this case overcome or destroy this presump- on? We think not. The company owns and operates about two ndred miles of street railway in the City of Seattle and the proof bmitted is confined to two of these lines only, aggregating about xteen miles in length. Conceding as we do that the order compels e company to operate these two lines at a loss, yet the entire sys- m may be operated at a profit and if so, there is no confiscation of roperty or deprivation of property rights. In St. L. & San Fran- sco Railway Company vs. Gill, 156 U. S., 649, the legislature of the ate of Arkansas had prescribed a maximum rate of three cents per ile for each passenger carried by the railroads of that State and posed a penalty of three hundred dollars for each overcharge, pay- le to the passenger from whom the overcharge was exacted. In an tion to recover this penalty the railway company defended on the ound that that portion of the railroad over which the plaintiff was rried was highly expensive to construct and maintain and that e cost of transporting passengers over the same and the mainte- ance thereof exceeded the maximum rate fixed by law. Porof was fered tending to show that "the actual cost of carrying each passen- ger over that portion of defendant's railway in plaintiff's pe- 3 tition mentioned, and over all its railway therein referred to, did and does now exceed the sum of three cents per mile for ch and every passenger so carried," and that "three cents per mile r the service rendered by defendant in carrying passengers, at the mes in plaintiff's petition mentioned, over the line of railroad erein mentioned, was not reasonable compensation, and that no

less than five cents per mile would be a reasonable sum." In d
posing of this defense and offer of proof the court said:

"It therefore appears that the allegations made and the evide
offered did not cover the company's railroad as an entirety even
the State of Kansas, but were made in reference to that portion of
road originally belonging to the St. Louis, Arkansas and Texas R
way, and extending from the northern boundary of Arkansas
Fayetteville in said State. In this state of facts we agree with
views of the Supreme Court of Arkansas, as disclosed in the opini
contained in the record, and which were to the effect that the corr
test was as to the effect of the act on the defendant's entire line, a
not upon that part which was formerly a part of one of the cons
dating roads; that the company cannot claim the right to earn a
profit from every mile, section, or other part into which the ro
might be divided, nor attack as unjust a regulation which fixed
rate at which some such part would be unremunerative; that it wo
be practically impossible to ascertain in what proportion the seve
parts should share with others in the expenses and receipts in wh
they participated; and, finally, that to the extent that the questi
of injustice is to be determined by the effects of the act upon
earnings of the company, the earnings of the entire line must be e
mated as against all its legitimate expenses under the operation
the act wthin the limits of the State of Arkansas."

This language is peculiarly applicable to a street railway syste
The passenger who travels five blocks ordinarily pays the same f
as the passenger who travels five miles. The one pays more than
service is worth while the other pays less, but the long haul and
short haul are supposed to equalize each other in the end. And a
attempt to fix street car fares so that each car or each line will bri
a reasonable return to the owner would destroy all uniformity
rates and practically abrogate the power of regulation. There
nothing in the recent case of Northern Pacific Railway Company
North Dakota, decided March 8, 1915, in conflict with these vie

In the latter case Mr. Justice Hughes, in delivering the op
374 ion of the court, said:

"In St. Louis & San Francisco Railway Co. v. Gill, 156
S., 649, a statute fixing a maximum rate for passengers in the St
of Arkansas was challenged, but the allegation and offer of pr
that the rate would compel the carriage of passengers at a loss rela
only to a portion or division, of the railroad and not to the result
all the traffic to which the rate in question applied. The holdi
that this was insufficient was in entire accord with the above sta
principle, * * * that the rate-making power may be exerci
in a practical way and that the legislature is not bound to assur
net profit from 'every mile, section, or other part into which the r
might be divided,' id., p. 665. A passenger rate may apply gener
throughout the State and the effect of the rate must be consider
with respect to the whole business governed by the rate."

The complaint charges that there has been no physical valuat
of the properties of the company and that the order was made by t
commission in a spirit of retaliation because of the refusal of the co

y to renew some traffic agreement with the Port of Seattle, but
e facts, if true, do not show or tend to show that the order is
er confiscatory or unreasonable. The court is concerned with re-
s rather than with motives or methods and on the record pre-
ed we are of opinion that the enforcement of the order should
be interfered with in so far as it relates merely to the running of
on the Ballard Beach, Alki Point, and Fauntleroy Park lines
nd the franchise limits of these lines.

We feel constrained to hold, however, that so much of the order
equires the furnishing of seats for all passengers on the Alki Point
Fauntleroy Park lines is unreasonable and void, in view of the
re penalties imposed by law for failure to comply therewith. The
r requires the company to furnish seats for "substantially all
ons using the Alki and Fauntleroy Park lines;" provides that
ubstantial compliance" with the order shall be deemed a suf-
nt compliance; that the company shall furnish seats at all times
the usual patronage of said lines" and excepts only, "emergency
ds" and "extraordinary and unusual occasions." Webster de-
s emergency as, "an unforeseen occurrence or combination of
circumstances which calls for immediate action or remedy;
pressing necessity; exigency." The same authority defines
extraordinary as "beyond or out of the common order or
thod; not usual; uncommon; rare."

The crowds which pass over these two lines mornings and even-
s and the thousands that flock to the parks and beaches on
days and summer afternoons are neither emergency crowds nor
the occasions extraordinary or unusual, and to require the com-
y to furnish cars and seats for all who present themselves for
nsportation over these single track railways, eight miles in length,
o require the impossible. We do not underestimate the diffi-
ties which confront the commission in its efforts to compel the
pany to furnish adequate facilities, nor do we overstate the
culties which confront the company in its efforts to furnish
e facilities. The furnishing of seats for passengers on street
ways is an unsolved problem and perhaps will remain so as long
a considerable part of the population is habitually attracted
the same direction at the same time in pursuit of business or
asure. The matter is not wholly beyond regulation and control,
wever. If, as appears in this case, one-third of the passengers
without seats during certain hours of the day, an increase in
ilities to that extent during these hours will, in a large measure,
ve the congestion. Such an order or regulation can be made
inite and specific and the company can reasonably comply there-
h, but to compel it to furnish cars and seats at all times and on
ordinary occasions for all who may present themselves for trans-
ation, as already stated, is an unreasonable requirement and
to which no transportation company can conform. This con-
sion finds ample support in the record and is supported by facts
d conditions within the common knowledge of all of which a
rt may well take judicial notice. To this extent the enforcement
the order will be enjoined, but in all other respects the applica-
n for an interlocutory injunction is denied.

376 Indorsed: Opinion. Filed in the U. S. District Co
Western Dist. of Washington, Northern Division, Apr.
1915. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.

377 In the District Court of the United States for the Wes
District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintif
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LE
Constituting the Public Service Commission of the State of W
ington, and W. V. Tanner, Attorney General of the State of W
ington, Defendants.

Order.

The application of the plaintiff for a temporary injunctio
the above entitled suit having been duly brought on for hea
on the 17th day of April, 1915, before Honorable William B. Gil
Circuit Judge, and Honorable Frank H. Rudkin and Honor
Jeremiah Neterer, District Judges, pursuant to notice duly gi
and the Judges having concurred in an opinion, duly filed, hol
that so much of the order of the Public Service Commission of
State of Washington, as required the through routing of cars u
the Ballard Beach, Alki Point and Fauntleroy Park lines sh
not be enjoined, and the Judges having also in such opinion
curred in holding that so much of the order of the Public Ser
Commission of the State of Washington as required the plai
to furnish a seat to every passenger desiring to travel upon
Fauntleroy Park line and the Alki Point line is unreasonable
void, and to that extent the enforcement of such order shoul
enjoined, it is

Ordered and adjudged that a temporary injunction be and
same is hereby to such extent granted, and the Clerk of this C
is hereby ordered to issue the same, restraining the def
378 ants Charles A. Reynolds, Frank R. Spinning and Ar
A. Lewis, constituting the Public Service Commission
the State of Washington, and W. V. Tanner, as Attorney Gen
of the State of Washington, from enforcing and from attemp
to enforce so much of the order of the Public Service Commis
of the State of Washington made on the 24th day of March, 1
as requires Puget Sound Traction, Light & Power Company
furnish to all persons desiring to travel upon its street railway
known as Alki Point line and Fauntleroy Park line with s
and from taking any action against the plaintiff for non-compli
with that portion of such order; and such temporary injun

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hall remain in force until the final hearing and determination f the above entitled suit.

It is further ordered that in all other respects the application of e plaintiff for a temporary injunction be and the same is hereby nied.

Dated May 19, 1915.

JEREMIAH ——, *Judge.*

The plaintiff excepts to so much of the above order as denies e injunction and the defendants except to so much of the above der as grants an injunction.

O. K. as to form.
W. V. TANNER,
Attorney General.
SCOTT Z. HENDERSON,
Ass't Att'y General.

Indorsed: Order. Filed in the U. S. District Court, Western ist. of Washington, Northern Division, May 20, 1915. Frank . Crosby, Clerk, by E. M. L., Deputy.

79 In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

Puget Sound Traction, Light & Power Company, Plaintiff,
v.
Charles A. Reynolds, Frank R. Spinning and Arthur A. Lewis, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Petition.

To the Honorable Jeremiah Neterer, District Judge of the United States Court for the Western District of Washington:

Puget Sound Traction, Light & Power Company, the above named laintiff, feeling aggrieved by so much of the interlocutory decree ndered and entered in the above entitled cause on the 19th day f May, 1915, as denies the application of the plaintiff for a tempoary injunction, and as refuses the plaintiff a temporary injunction straining the above named defendants, and each of them, from nforcing the order of the Public Service Commission of the State f Washington made on the 24th day of March, 1915, which order equired the plaintiff to through-route its cars operated under its allard Beach, Alki Point and Fauntleroy Park franchises beyond he termini of such franchises, does hereby appeal from that part of

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said interlocutory decree herein mentioned to the Supreme Cou of the United States, for the reasons set forth in the assignment errors filed herewith, and it prays that its appeal be allowed an that citation be issued as provided by law, and that a transcript the record and proceedings and documents upon which sai
380 decree was based, duly authenticated, be sent to the Supren Court of the United States, sitting at Washington, in th District of Columbia, under the rules of such court in such cas made and provided.

Your petitioner shows that in the above entitled cause the pet tioner claims that the order of the Public Service Commission of th State of Washington made on the 24th day of March, 1915, is law of the State of Washington conflicting with the Constitutio of the United States and with the Fourteenth Amendment there and that the amount in the above entitled suit and on appeal e ceeds, exclusive of interest and costs, the sum of five thousand do lars ($5000).

And your petitioner further prays that the proper order relatin to the security to be required of it be made.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,
By JAMES B. HOWE, *Its Solicitor.*

Indorsed: Petition. Filed in the U. S. District Court, Weste Dist. of Washington, Northern Division, June 16, 1915. Fran L. Crosby, Clerk, by Ed. M. Lakin, Deputy.

381 In the District Court of the United States for the Weste District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff.
v.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWI Constituting the Public Service Commission of the State of Wash ington, and W. V. Tanner, Attorney General of the State of Wash ington, Defendants.

Assignment of Errors.

Now comes Puget Sound Traction, Light & Power Compan plaintiff in the above entitled cause, and files the following assig ment of errors, upon which it will rely on its appeal from th interlocutory decree entered in the above entitled cause on th 19th day of May, 1915:

I.

The Court erred in denying plaintiff's motion for a tempora injunction enjoining the enforcement of so much of the order

the Public Service Commission of the State of Washington made on the 24th day of March, 1915, as required plaintiff to operate through cars beyond the termini of its Alki Point, Fauntleroy Park and Ballard Beach franchises.

II.

The Court erred in not granting such motion and in not holding so much of such order void as a law impairing the obligation of plaintiff's contract, in violation of Section 10, Article I of the Constitution of the United States.

III.

The Court erred in not granting such motion and in not holding so much of such order void as depriving plaintiff of a vested right and of its property, without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

IV.

The Court erred in not granting such motion and in not holding that the order requiring plaintiff to operate its cars beyond the limits of its franchises, at a loss of upwards of twenty thousand dollars ($20,000) a year, and to render services for less than the value of the service rendered and at a rate less than a reasonable rate, deprived plaintiff of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

V.

The Court erred in not holding that such order was arbitrary and void, and in not enjoining its enforcement.

VI.

The Court erred in not holding that the enforcement of such order should be enjoined without reference to the return to the plaintiff from its railway lines other than the lines directly affected by such order.

VII.

The Court erred in not holding such order void as imposing an obligation not involved in plaintiff's duty and beyond the reasonable exercise of the protective power of the State of Washington.

VIII.

The Court erred in not holding such order void, and in not enjoining its enforcement because it required an additional service

from plaintiff, and prevented the plaintiff from obtai
383 just, fair, reasonable and sufficient compensation for
service, or any compensation whatsoever.

Wherefore, in order that the foregoing Assignment of Errors be and appear of record, plaintiff presents the same to the Court prays that such disposition be made thereof as is in accordance the law and statutes of the United States in such cases made provided; and plaintiff prays that said interlocutory decree, to extent that it denies the temporary injunction applied for, be versed, and that a decree in favor of the plaintiff be entered by Court.

JAMES B. HOWE,
Solicitor and Counsel for Plainti

Indorsed: Assignment of Errors. Filed in the U. S. Dis Court, Western Dist. of Washington, Northern Division, June 1915. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.

384 In the District Court of the United States for the Wes District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff
v.
CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEW Constituting the Public Service Commission of the State of Wa ington, and W. V. Tanner, Attorney General of the State Washington, Defendants.

Order Allowing Appeal.

The plaintiff in the above entitled cause having filed its assig ment of errors assigning error in the interlocutory decree rende and entered by the court in the above entitled cause on the 19th d of May, 1915, insofar as such interlocutory decree denies the appli tion for a temporary injunction therein, and the plaintiff havi filed its petition for an appeal from so much of such decree to t Supreme Court of the United States, it is, on motion of James Howe, Esq., solicitor and counsel for plaintiff,

Ordered That the appeal of the plaintiff to the Supreme Court the United States from the interlocutory decree of this court here fore filed and entered herein be and the same is hereby allowed, a that a transcript of the record, testimony, exhibits, stipulations a all proceedings be forthwith transmitted to said Supreme Court of t United States.

It is further ordered that the bond on appeal be fixed in
85 the sum of one thousand dollars ($1,000).
Dated June 16, 1915.

JEREMIAH NETERER, *Judge.*

Indorsed: Order Allowing Appeal. Filed in the U. S. District
ourt, Western Dist. of Washington, Northern Division, June 16,
915. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.

86 In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Bond on Appeal.

Know all men by these presents, That Puget Sound Traction,
ight & Power Company, a corporation created and existing under
e laws of the State of Massachusetts, doing business in the State
f Washington, as principal, and Maryland Casualty Company, a
rporation created and existing under the laws of the State of
aryland, authorized to become surety upon bonds and recognizances,
nd duly authorized to do business in the State of Washington, as
urety, are firmly held and bound unto the State of Washington
nd the above named defendants in the full and just sum of One
housand dollars ($1,000.00), for which payment, well and truly
be made, the said principal and surety do hereby bind themselves
nd their successors, jointly and severally, firmly by these presents.
Sealed with our seals and dated at Seattle, Washington, this 16th
ay of June, 1915.

Whereas, the plaintiff in the above entitled cause applied
87 for a temporary injunction against the above named defendants to enjoin the enforcement of an order of the Public
ervice Commission of the State of Washington made on the 24th
y of March, 1915; and

Whereas, such application was heard before a Circuit Judge of the
nited States and two District Judges of the United States, and an
terlocutory decree was rendered and entered on the 19th day of
ay, 1915, granting a temporary injunction in part and in part
nying a temporary injunction; and

Whereas, the plaintiff has appealed to the Supreme Court of the

E IN CENTER

United States from so much of such interlocutory decree made and entered on the 19th day of May, 1915, as denies its application for such temporary injunction; and

Whereas, an order has been made allowing such appeal and requiring the plaintiff to execute an appeal bond, conditioned according to law, in the sum of One Thousand dollars ($1,000.00);

Now, therefore, the condition of this obligation is such that if the above named plaintiff shall prosecute its said appeal to effect and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise it shall remain in full force and effect.

[Corporate Seal, Traction Co.]

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,
By JAMES B. HOWE,
Its Solicitor and Counsel.
MARYLAND CASUALTY COMPANY,
By WM. CALHOUN,
Its Att'y in Fact, and
JOHN W. ROBERTS,
Its Att'y in Fact.

[Corporate Seal Maryland Casualty Co.]

Approved June 16, 1915.

JEREMIAH NETERER,
District Judge.

388 Indorsed: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 16, 1915. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.

COPY BOUND CLOS

In the District Court of the United States for the Western District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,

vs.

CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR A. Lewis, Constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Charles A. Reynolds, Frank R. Spinning, and Arthur A. Lewis, constituting the Public Service Commission of the State of Washington, and W. V. Tanner, Attorney General of the State of Washington, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, within sixty (60) days from the 16th day of June, 1915, pursuant to an appeal duly allowed by the District Court of the United States for the Western District of Washington, and filed in the Clerk's office of said Court on the 16th day of June, 1915, in a cause wherein Puget Sound Traction, Light & Power Company is plaintiff and appellant, and you are defendants and appellees, to show cause, if any, why the interlocutory decree rendered against said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jeremiah Neterer, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 16th day of June, 1915.

JEREMIAH NETERER,
United States District Judge for the Western District of Washington, Northern Division.

Due and proper service of the above and foregoing Citation is hereby accepted and acknowledged this 19th day of June, 1915.

W. V. TANNER,
SCOTT Z. HENDERSON,
Solicitors for Defendants and Appellees.

Indorsed: (Original.) In Equity. No. 60. In The District Court of the United States, for the Western District of Washington, Northern Division. Puget Sound Traction, Light & Power Com-

pany, Plaintiff, vs. Charles A. Reynolds et al., constituting Publ Service Commission of Washington, and W. V. Tanner, as Attorne General, Defendants. Citation. Filed in the U. S. District Cou Western District of Washington, Northern Division, June 22, 191 Frank L. Crosby, Clerk, by Ed M. Lakin, Deputy.

391 In the District Court of the United States for the Weste District of Washington, Northern Division.

In Equity.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS et al., Defendants.

To the Clerk of the above-entitled Court:

Please prepare record on appeal to the Supreme Court of t United States in the above entitled cause, and include therein pleadings, affidavits, orders and appellate papers, except the stipul tion and order allowing amended bill of complaint to be filed, t amended bill of complaint, and all memoranda of authorities.

JAMES B. HOWE,
Solicitor for Plaintiff and Appellant.

Indorsed: Præcipe for Record. Filed in the U. S. District Cou Western Dist. of Washington, Northern Division, July 6, 191 Frank L. Crosby, Clerk, by E. M. L., Deputy.

392 In the District Court of the United States for the Weste District of Washington, Northern Division.

No. 60.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.
CHARLES A. REYNOLDS, FRANK R. SPINNING, and ARTHUR Lewis, Constituting the Public Service Commission of the St of Washington, and W. V. Tanner, Attorney General of the St of Washington, Defendants.

Certificate of Clerk U. S. District Court to Transcript of Reco

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, Frank L. Crosby, Clerk of the United States District Cou for the Western District of Washington, do hereby certify the 3

written pages, numbered from 1 to 391, inclusive, to be a full, correct and complete copy of so much of the record, papers, other proceedings in the above and foregoing entitled cause are necessary to the hearing of said cause, and as is called for counsel of record herein, as the same remain of record and on in the office of the Clerk of said District Court, and that the same stitute the record on appeal from the judgment of said United tes District Court for the Western District of Washington, to Supreme Court of the United States.

further certify the following to be a full, true and correct state- nt of all expenses, costs, fees and charges incurred and paid in office by or on behalf of the Plaintiff for the preparation and certification of the typewritten transcript of record issued to the Supreme Court of the United States in the above entitled cause, to wit:

k's fee (Sec. 828 R. S. U. S.) for making record, ertificate or return, 950 folios at 15c.	$142.50
rtificate of Clerk to transcript of record—4 folios at 15c.	.50
l to said Certificate	.20
Total	$143.30

hereby certify that the above cost for preparing and certifying ord amounting to $143.30, has been paid to me by Messrs. James Howe and Hugh A. Tait, Attorneys for Plaintiff.

further certify that I hereto attach and herewith transmit the ginal Citation issued in this cause.

n witness whereof I have hereto set my hand and affixed the l of said District Court at Seattle, in said District, this 20th day July, 1915.

[Seal of the United States District Court, Western District of Washington.]

FRANK L. CROSBY,
Clerk U. S. District Court.

394 In the District Court of the United States, for the Weste
District of Washington, Northern Division.

No. 60.

In Equity.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaint

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR
Lewis, Constituting the Public Service Commission of the St
of Washington, and W. V. Tanner, Attorney General of t
State of Washington, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Charles A. Reynolds, Fr
R. Spinning and Arthur A. Lewis, constituting the Public Se
ice Commission of the State of Washington, and W. V. Tann
Attorney General of the State of Washington, Greeting:

You, and each of you, are hereby cited and admonished to
and appear at the Supreme Court of the United States, to be h
at the City of Washington, in the District of Columbia, with
sixty (60) days from the 16th day of June, 1915, pursuant to
appeal duly allowed by the District Court of the United States
the Western District of Washington and filed in the Clerk's of
of said court on the 16th day of June, 1915, in a cause wher
Puget Sound Traction, Light & Power Company is plaintiff a
appellant, and you are defendants and appellees, to show cause,
any, why the interlocutory decree rendered against said appella
as in said appeal mentioned, should not be corrected, and why spe
justice should not be done to the parties in that
395 half.

Witness the Honorable Jeremiah Neterer, Judge of
District Court of the United States for the Western District
Washington, Northern Division, this 16th day of June, 1915.

JEREMIAH NETERER,
United States District Judge, for the Western
District of Washington, Northern Division.

Due and proper service of the above and foregoing Citation
hereby accepted and acknowledged, this 19th day of June, 1915.

W. V. TANNER,
SCOTT Z. HENDERSON,
Solicitors for Defendants and Appellees.

[Endorsed:] (Original.) In Equity. No. 60. In the District Court of the United States for the Western District Washington, Northern Division. Puget Sound Traction, Light ower Company, Plaintiff, vs. Charles A. Reynolds et al., con- ting Public Service Commission of Washington, and W. V. ner, as Attorney General, Defendants. Citation. James B. e, P. O. and Office Address, Room 235 Pioneer Building, Seattle, h. Solicitor for Plaintiff. Filed in the U. S. District Court, tern Dist. of Washington, Northern Division, Jun- 22, 1915. k L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the Supreme Court of the United States.

No. —.

ET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff, Appellant,

v.

ARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. Lewis, Constituting the Public Service Commission of the State f Washington, and W. V. Tanner, Attorney General of the State f Washington, Defendants, Appellees.

Stipulation.

t is Hereby Stipulated by and between the undersigned that all stions arising on the appeal in the above entitled suit are pre- e by the pleadings and the affidavits and therefore the evidence en by the Public Service Commission of the State of Washington erred to in the Bill of Complaint need not be printed.

It is Further Stipulated that the remainder of the record in- ding the opinion rendered on the application for a temporary in- ction, and this Stipulation, shall be printed.

JAMES B. MOORE,
Solicitor for Plaintiff, Appellant.
W. V. TANNER,
Attorney General.
SCOTT Z. HENDERSON,
Ass't Att'y Gen.,
Solicitors for Defendants, Appellees.

[Endorsed:] (Original.) No. 599/24,882. In the Supreme Court of the United States. Puget Sound Traction, ght & Power Company, Plaintiff, Appellant, v. Charles A. Rey- ds, Frank R. Spinning and Arthur A. Lewis, constitution the Pub- Service Commission of the State of Washington, and W. V. Tan- , Attorney General of the State of Washington, Defendants, Ap- es, Stipualtion. James B. Howe, Seattle, Washington, Solicitor Plaintiff, Appellant.

399 [Endorsed:] File No. 24882. Supreme Court U. S., October term, 1915. Term No. 599. Puget Sound Traction, Light and Power Co., App't, vs. Charles A. Reynolds, et al., etc. Stipulation as to printing record. Filed August 30th, 1915.

Endorsed on cover: File No. 24,882. W. Washington, D. C. U. S. Term No. 220. Puget Sound Traction, Light & Power Company, appellant, vs. Charles A. Reynolds, Frank R. Spinning, and Arthur A. Lewis, constituting The Public Service Commission of the State of Washington, and W. V. Tanner, attorney general. Filed August 16th, 1915. File No. 24,882.

office Supreme Court, U.
FILED
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JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1916.

No. 220

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,

Appellant,

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, constituting THE PUBLIC SERVICE COMMISSION of the State of Washington, and W. V. TANNER, Attorney General,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF COUNSEL FOR APPELLANT

JAMES B. HOWE,
HUGH A. TAIT,
Counsel for Appellant.

860 Stuart Building,
Seattle, Washington.

LOWMAN & HANFORD CO., SEATTLE

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Supreme Court of the United States

October Term, 1916.

No. 220

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,

Appellant,

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, constituting THE PUBLIC SERVICE COMMISSION of the State of Washington, and W. V. TANNER, Attorney General,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF COUNSEL FOR APPELLANT

STATEMENT

Appellant's appeal is from so much of an interlocutory decree of the District Court as denied appellant a temporary injunction restraining appellees, until after a trial upon the merits, from enforcing so much of an order of The Public Service

Commission of the State of Washington as appellant alleged violated its rights under Article 1, Section 10 of the Constitution of the United States, the Fourteenth Amendment to the Constitution and the law of the State of Washington.

Three questions arise on this appeal—

1. Did the order of The Public Service Commission of Washington violate the Fourteenth Amendment to the Constitution of the United States because it required appellant, the owner of separate street railways constructed and operated under separate distinct franchises, to operate through cars over certain of its lines by a method so expensive and at rates so unreasonably low as to deprive appellant of compensation therefor, nothwithstanding the fact that at the time of the making of such order appellant was fully complying with the provisions of its franchises?

2. Was the order of the Commission so unreasonable and arbitrary as to violate the Fourteenth Amendment and the Public Service Commission Law of the State because it imposed upon the owner of certain street railway lines then operated at a loss, because of prescribed rates unreasonably low and less than the value of the service rendered, the additional burden of giving through service not required by its franchises and without compensation therefor; or because it arbitrarily prevented such owner from managing its property in accordance with its legal rights?

3. Did the order of the Commision violate Article 1, Section 10 of the Constitution of the United States by impairing the contracts contained in appellant's franchises, under which the street railway lines affected by the order were constructed and operated, by requiring through service of cars instead of physical

transfers of passengers from car to car, and in a manner enabling passengers to ride on 4-cent tickets, although the franchises provided for 5-cent fares?

Appellant is a corporation created under the laws of Massachusetts, authorized to do and under special secondary franchises doing a street railway and an electric light and power business in Seattle and Western Washington.

By its bill appellant invoked the jurisdiction of the District Court both upon constitutional grounds and by reason of diversity of citizenship. The order complained of directed—

> "1. That the defendant (appellant) company continue the operation of through service on the Ballard Beach line.
>
> "2. That the Alki Point and Fauntleroy Park lines be operated through the City of Seattle on First and Second Avenues as far north at least as Virginia Street.
>
> "3. That the defendant company furnish sufficient cars to provide seats for substantially all persons using the Alki Point and Fauntleroy Park lines." (Page 45, Folio 367).

The application for a temporary injunction was heard by a Circuit Judge and two District Judges. A temporary injunction was granted restraining the enforcement of so much of the order of the Commission as required appellant to furnish seats to substantially all passengers upon the Alki and Fauntleroy lines, and denied as to the remainder of the order. Appellant duly appealed from so much of the interlocutory decree as denied it a

temporary injunction and filed its Assignments of Error, which are condensed in the Specifications of Error hereinafter set forth on which appellant relies for a reversal of the decree appealed from. (Pages 52, 54, 55, 56, Folios 377, 388).

Appellant owns the Ballard Beach line extending from Ballard Beach to the intersection of West Fifty-ninth Street and Twenty-fourth Avenue Northwest. It was constructed and is operated under Franchise Ordinance No. 1020 of the City of Ballard, which city some years ago became a part of Seattle. (Folio 8). At the intersection of West Fifty-ninth Street and Twenty-fourth Avenue Northwest the line connects with other street railway lines of appellant constructed and operated under other franchises. As ordinarily operated passengers on reaching the intersection of West Fifty-ninth Street and Twenty-fourth Avenue Northwest, who paid a fare of 5 cents and wished to travel further, transferred to and from the cars on the Ballard Beach line and the connecting lines. For some time prior to and at the date of the making of the order complained of appellant had been and was operating through cars over the Ballard Beach line and the connecting lines, so that no physical transfer was necessary at West Fifty-ninth Street and Twenty-fourth Avenue Northwest, and such passengers, by reason of the operation of a through car, were enabled to reach the downtown districts of the city on 4-cent tickets. Appellant, by reason of the expense attached to such opera-

tion, gave notice that on a certain date it would cease the operation of through cars and return to the original method of operation. The order of the Commission prohibited appellant from reinstating the original method.

Appellant owns the Alki and Fauntleroy lines, each constructed under a separate franchise. These lines were ordinarily operated from their southern termini as far north as Yesler Way and from Yesler Way south to their southern termini. At Yesler Way these lines connect with other lines owned by appellant extending north and east, constructed and operated under other franchises. Each of these two lines are about eight or nine miles in length extending over unsettled tide lands. For two or three years prior to the date of the order complained of cars on these lines instead of stopping on their northbound trips at Yesler Way and then returning south, continued north to Virginia Street about a mile north of Yesler Way. This method of operation enabled passengers taking the cars south of Yesler Way to travel as far north as Virginia Street on 4-cent tickets instead of paying a 5-cent fare for such trip and physically transferring at Yesler Way to a northbound car. It also enabled a southbound passenger boarding a car at Virginia Street to ride to the southern termini of either line on a 4-cent ticket instead of paying a 5-cent fare and physically transferring at Yesler Way to an Alki or Fauntleroy car. Appellant, because of the expense of so operating and because

of its necessities, discontinued this method and resumed its original method. The expense of operating cars as far north as Virginia Street amounted annually to approximately $20,000 more than by stopping at Yesler Way and requiring passengers to transfer. (Folio 7). The order of the Commission required appellant to resume through service and to furnish substantially a seat for every passenger except in case of emergency. (Pages 1-15, 45-52).

In the opinion of the District Court the court said: (Folio 368)

> "The effect of the order was therefore to require the plaintiff company to reinstate through service on the Ballard Beach line."

Referring to the Alki and Fauntleroy lines the court said: (Folio 368)

> "The uncontradicted testimony further shows that the two latter lines run for a considerable distance over the tide flats, receiving and discharging but few passengers en route, so that a majority of the passengers are carried a distance of five or six miles before leaving the cars or reaching their destination. For this reason, among others, these two lines have never paid operating expenses and perhaps never will, because the average haul is so long that the more cars operated and the more passengers carried the greater will be the loss to the company * * * ."
>
> "The franchise ordinances of the City of Ballard and the City of Seattle, under which the three lines in question are operated, provide in substance that the grantee, its successors and assigns, should have the right at any

and all times to make reasonable rules and regulations for the management and operation of the railway lines therein provided for not inconsistent with the laws of the State or the charter and ordinances of the City; that the grantee shall have the right to charge a passenger fare of not exceeding 5 cents for one continuous passage for each passenger; that the grantee shall keep on sale at its main office and power station in the City of Seattle, commutation tickets for one dollar each, entitling the purchaser to twenty-five rides, but such tickets shall not be transferable nor entitle the owner to a transfer, and the company is authorized to make reasonable rules and regulations to enforce the prohibition against transfers."

The court quoted from the Public Service Commission law of Washington, enacted in 1911, long after the franchises involved were granted and the street railways affected by the order, constructed, the following provisions: (Folio 371)

"All charges made for any service rendered or to be rendered in the transportation of persons or property or in connection therewith by any common carrier or by any two or more common carriers shall be just and fair, reasonable and sufficient * * * ."

"Whenever the Commission shall find after (such) hearing that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of

persons and property by such common carrier, and fix the same by its order or rule as hereinafter provided."

The court then proceeded: (Folio 372)

"Ample authority for the order of the Commission is found in these sections, and the franchise ordinances of the City of Seattle do not stand in the way of its exercise. * * * ."

"The company owns and operates about two hundred miles of street railway in the City of Seattle, and the proof submitted is confined to two of these lines only, aggregating about sixteen miles in length. Conceding as we do that the order compels the company to operate these two lines at a loss, yet the entire system may be operated at a profit, and if so there is no confiscation of property or deprivation of property rights." (Page 46, Folios 368, 369; Pages 48, 49, Folios 371, 372).

The bill contained the following allegations:

"XIII.

As to the Ballard Beach line, the Commission ruled that notwithstanding the franchise provisions allowing the plaintiff to make reasonable rules and regulations not in conflict with law or the ordinances of the City, the Commission would require the plaintiff to carry passengers in through cars and would not permit the plaintiff to require passengers to transfer to or from the Ballard Beach line. The Ballard Beach line was not and is not earning enough to pay the cost of transporting persons traveling thereon. Requiring passengers to transfer, instead of allowing them to be carried upon a through car, saves in operating cost many thousands of dollars, and the service installed and intended to be installed by the plaintiff had for

its object the reduction of unnecessary expense without impairing the service theretofore rendered by the plaintiff upon the Ballard Beach line and upon the Fauntleroy and Alki lines. The cost of operating the Alki and Fauntleroy lines north of Yesler Way to Virginia Street will be upwards of twenty thousand dollars ($20,000) a year, Virginia Street being approximately one mile north of Yesler Way.

XIV.

Approximately from seventy-five to ninety-five per cent of the persons traveling north upon the Alki and Fauntleroy lines proceed north of Yesler Way, and if a through car upon those lines be operated north of Yesler Way to Virginia Street most of such persons will travel upon four cent tickets, and the plaintiff will thereby be deprived of one-fifth of its fare of five cents which it is entitled to charge under its franchises when a passenger desires a transfer, and a transfer is necessary when the Alki and Fauntleroy cars terminate their route at Yesler Way.

XV.

The order of the Commission requires the plaintiff to transport passengers upon, to and over the Ballard Beach line for less than their cost of carriage, and deprives the plaintiff of all compensation for the service rendered. The order of the Commission in respect to the Alki Point line and the Fauntleroy Park line requires the plaintiff to transport passengers at less than the cost of carriage, and deprives the plaintiff not only of all compensation for the services rendered above the cost of carriage, but deprives the plaintiff of the right to receive the actual cost of carriage * * * ." (Pages 10, 11, Folios 16-18).

These allegations of the verified bill, and of the affidavits suporting it, were not denied. The Commission asserted the right to make its order and the District Court justified such assertion on the theory that the revenues derived by appellant from operating other street railway lines, constructed and operated under other franchises, were not shown to be insufficient to make up the losses on the lines involved and still afford appellant a return upon the value of all of its street railway property. (Folios 68, 72).

SPECIFICATIONS OF ERROR

The interlocutory decree, sustaining in part the order of The Public Service Commission of Washington and denying a temporary injunction restraining so much of such order as required through car service by appellant instead of service with a physical transfer, as called for by appellant's franchises, is erroneous:

(A) Because the order of The Public Service Commission and the decree sustaining it deprived appellant of its property without due process of law, and deprived it of the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States, by requiring appellant to render service not within its obligations and without compensation;

(B) Because such order was arbitrary and unreasonable both under the Fourteenth Amendment to the Constitution of the United States and of the law of the State;

(C) Because such order violated Article 1, Section 10 of the Constitution of the United

States, by impairing the contract rights of appellant contained in its franchises by requiring operation of through cars instead of operation of cars between the termini of such franchises with physical transfers from car to car and from route to route.

ARGUMENT

A.

The order of The Public Service Commission and the interlocutory decree sustaining it, as to through car service, violate the Fourteenth Amendment to the Constitution of the United States.

The order requires appellant, the owner of three franchises under which it operates three street car lines, constructed thereunder, to carry, by means of through cars at large additional expense, without additional charge, passengers who, having been carried over such lines, wish to travel further on other lines owned by appellant, but constructed and operated under other franchises, as well as those who having traveled on such other lines, wish to travel over the three lines first mentioned.

It is not claimed by appellees, nor did the District Court decide, that the franchises of appellant required operation as prescribed by the order, nor that appellant's method of operation was not in accordance with the provisions of its franchises. On the contrary, appellees claim the right to require appellant to operate as prescribed by the order complained of, the provisions of the franchises to the contrary notwithstanding.

In dealing with the question now under consideration it is to be remembered that appellant in operating street railways is not operating directly under its corporate or primary franchise. It is operating under its secondary or special street railway franchises which prescribe its rights and duties and without which it could not operate. The rule applicable to a steam railroad operating a single line under its articles of incorporation is, we submit, not applicable to a case in which title to separate street railways, operated under separate and distinct secondary or special franchises, becomes vested in a single owner and such franchises remain outstanding. As no other franchises than the outstanding franchises have been granted operation must be under them or else operation is without legal authority. As the franchises are in terms assignable, the fact that the owner of one franchise purchases another cannot cause such purchaser to operate so as to extinguish both and create a new franchise which has neither been granted by authority nor accepted by any grantee.

> "Railroad property is private property devoted to a public use. As a corporation the owner is subject to the obligations of its charter. *As the holder of special franchises it is subject to the conditions upon which they were granted* * * * . But broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use, *on certain terms,* does not justify the requirement that it shall be devoted to other public uses or to the same use *on other terms,* or the imposition of restric-

tions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed * * * . The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that *are not incident to its engagement.*" (Italics ours).

Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585-595.

"The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes outside the undertaking assumed."

Id 604.

The District Court, it is submitted, erred in assuming that because in the case of a steam railroad the fact that the revenue from the whole road afforded a sufficient return upon the value of the whole road was a good answer to the charge of confiscation even though the revenue from a particular portion of the road was unremunerative as to that portion, afforded any foundation for the proposition that the owner of distinct lines of street railway, operated under distinct franchises, could be required to ignore the separability of the franchises and operate the lines as though there were a single franchise. If such a result should follow from a single ownership of separate and distinct lines operated under separate and distinct franchises, the question naturally presents itself whether non-compliance with the terms of one franchise

would be ground for forfeiture of all or only of the one not complied with. If the terms of one franchise were in direct conflict with the terms of another, is it possible that a single ownership of both would destroy the terms of one and preserve those of the other, or destroy the terms of both? If, for instance, franchise No. 1 should provide that operation should be by horse-drawn cars and not otherwise, and franchise No. 2 should provide that operation should be by electrically-propelled cars and not otherwise, and if both franchises should become vested in a single owner, can there be any doubt that such owner would be required to operate each line in accordance with its franchise? Under the rule applied by the District Court the vesting of both franchises, in one company, would operate to create new rights which the city did not grant and which the company did not accept. The District Court, it is submitted, failed to distinguish the obligations created by the primary corporate franchise of the company from those created by the special secondary franchises to construct and operate street railways.

It is not disputed that appellant was giving the service which its special or secondary franchises required, and which by their acceptance it agreed to give. The order of the Commission, however, requires it to give service at increased cost without additional compensation and by a method which decreases the rate of fare, allowed to be charged, to an unreasonably low rate and to one which is less

than the value of the service rendered. The bill contained the following allegations in reference to the Alki and Fauntleroy lines:

> "Neither of the lines of railway mentioned herein are earning or can earn sufficient to pay the cost of transportation of persons thereon, nor can they ever earn sufficient to pay such cost so long as the fare is limited to five cents, even if every person traveling paid a 5-cent fare, such fare being less than a reasonable rate and less than the value of the service rendered." (Folios 360-362).

These allegations were not denied. Is it any answer when the validity of a rate on a single line of street railway, constructed and operated under a separate franchise, is challenged by the carrier as being unreasonably low and less than the value of the service rendered, to admit the truth of the challenge but avoid its legal effect because the carrier does not show that from other lines operated under other franchises a revenue is derived sufficient to make up the loss from the lines first mentioned? The rate allowed by the franchise is, in the absence of proof to the contrary, presumed to be the measure of the value of the service required from the grantee. To require the service to be extended beyond the scope of the franchise, while the rate, on its face, is retained is as effectual a reduction of rate as though the rate itself were specifically reduced. It is useless to claim that a rate is not reduced because on its face it remains unchanged, while the service on which the rate is based is so increased and changed

that the cost of rendering it leaves no compensation to the carrier.

> "It would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service."
>
> *Norfolk & Western Ry. v. West Virginia*, 236 U. S. 605-609.

> "Where it is established that a commodity or a class of traffic has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation or virtually at cost, and thus the carrier would be denied a reasonable reward for its services after taking into account the entire traffic to which the rate applies, it must be concluded that the state has exceeded its authority."
>
> *Northern Pacific Ry. Co. v. North Dakota*, 236 U. S. 585-604.

There is certainly a plain distinction between the case where a carrier is compelled to render service although the business is unprofitable when done at reasonable rates, and one where though the business would be profitable at reasonable rates the carrier is required to charge less than a reasonable rate and less than the value of the service rendered, and, therefore, to sustain a loss which it would otherwise not sustain.

> "While local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the state may compel the carrier to maintain a rate upon a par-

ticular commodity that is less than reasonable or—as might equally well be asserted—to carry gratuitously in order to build up a local enterprise. That would be to go outside the carrier's undertaking and outside the field of reasonable supervision of the conduct of its business, *and would be equivalent to an appropriation of the property to public uses upon terms to which the carrier had in no way agreed.* It does not aid the argument to urge that the state may permit the carrier to make good its losses by charges for other transportation. If other rates are exorbitant they may be reduced. Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action." (Italics ours).

Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585-598.

It is hard to follow reasoning which leads to the conclusion that a company which owns two lines of railway, each operated under its own separate franchise, may be denied relief from burdens imposed outside of the terms of one franchise and which require it to operate at a loss because it fails to show that its other line, operated under its other franchise, does not make the loss good. Why should those served by the second line be obliged to pay rates sufficiently high to make up the loss resulting from the increased burdens and non-compensatory rates enforced on the first line?

"It has repeatedly been assumed in the decisions of this court that the state has no arbitrary power over the carrier's rates and may

not select a particular commodity or class of traffic for carriage *without reasonable reward.*" (Italics ours).

Northern Pacific Ry. Co. v. Dakota, 236 U. S. 585-601.

"Where the rates, as a whole, are under consideration there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable, for if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing *or for less than a reasonable rate.* On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article." (Italics ours).

Interstate Commerce Commission v. Union Pacific R. R., 222 U. S. 541-549.

Under its franchises and the law of the state appellant could not charge more than 5 cents for a single passage between points on its line within the city limits. Under its franchises it was bound to carry passengers between termini of a single line on 4-cent tickets, without giving the privilege to passengers of transfer to another line. The Public Service Commission Law of 1911, which created the Public Service Commission, and under which authority to make the order complained of is asserted, provided in Section 25 as follows:

"Section 25. FARES AND TRANSFERS ON STREET RAILWAYS.

No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its pasesngers transfers entitling such passengers to one continuous trip over and upon portions of its lines within the same city or town not reached by the originating car."

The state law and the franchises of appellant fix a maximum fare of 5 cents per passenger, with the privilege of physical transfer. The franchises provided for passage over a single line on a 4-cent ticket without transfer. Appellant was complying with both its franchises and the state law at the time the order was made. The order complained of required appellant to give through service for 5 cents instead of service between termini with a physical transfer to other cars, and also to operate so that on a 4-cent ticket passengers could travel beyond the termini of the original franchise. The maximum fare having been fixed on the basis of 5 cents, with physical transfer, the presumption is that such fare represented the reasonable value of such service. The requirement of much greater service for the same or a lesser fare was as effectual a reduction of fare as if the same service had been continued and the fare specifically reduced, and when it is conceded that the reduction on the lines involved produces the result of requiring appellant

to operate not only for less than the value of the service rendered, but at an absolute loss, the conclusion cannot be escaped that the order was arbitrary and deprived appellant of its property without due process of law.

> "What right has the legislature to take from the company the compensation it would otherwise receive for the use of its property in transporting an individual or classes of persons over its road and compel it to transport them free or for a less sum than is provided by the general law? Does not such act if enforced take the property of the company without due process of law? We are convinced that the legislature cannot thus interfere with the conduct of the affairs of corporations."
>
> *Lake Shore Ry. Co. v. Smith,* 173 U. S. 684-695.

It is submitted that the order in the case at bar, which requires appellant to carry pasesngers over portions of two separate and distinct franchise routes upon 4-cent tickets, and to give them through service by means of a single car instead of service with a physical transfer between cars and routes, is, to the extent of such additional service, as effectual a taking of appellant's property as if appellant were required to carry such persons free.

If the order complained of is valid in the present case, then The Public Service Commission is vested with power to eliminate all physical transfers and require appellant to operate only through cars. In other words, appellees assert the authority, notwithstanding the provisions of appellant's franchise, to

convert 20 or 30 franchises, providing for physical transfers from car to car and from route to route, into a single blanket franchise. Neither appellant nor its predecessors entered into any such contract, and it is submitted that such a change in appellant's contracts would not be regulation of its business but would constitute a destruction of appellant's rights.

The fact that appellant, prior to the making of the order complained of, had been giving through service did not deprive appellant of its legal right to reinstate the service which was the consideration for the fare fixed both in its franchises and in the law of the state. The fact that appellant had given more than its franchises and the law required of it is no justification for compelling appellant to continue that service when experience has demonstrated that the lines upon which the service was being given were operated at a loss.

> "What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of the legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do; nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in the legislature to pass a statute in relation to

the same business imposing additional burdens upon the company.

Lake Shore Ry. Co. v. Smith, 173 U. S. 684-697.

Wilmington City Ry. Co. v. Taylor, 198 Fed. 159-167.

Minneapolis v. Street Ry. Co., 215 U. S. 417-435.

B.

The order complained of is arbitrary and unreasonable both under the Fourteenth Amendment to the Constitution of the United States and under the law of the state.

The order which requires a company, unable under the maximum fare fixed by law to earn any compensation above the cost of service, because such maximum fare is unreasonably low and less than the value of the service rendered, to give additional service costing many thousands of dollars to a particular class of patrons, is not only discriminatory but is arbitrary.

Section 53 of the Public Service Commission law of 1911 vests The Public Service Commission with authority, if it finds any regulation or practice of the carrier to be unjust, unreasonable, inadequate or insufficient, to determine what is just, reasonable, adequate and sufficient and to substitute the latter for the former. The law does not vest the Commission with jurisdiction to substitute for a reasonable regulation another regulation which the Commission thinks should be substituted. The regulation of the carrier must first be found to be unreasonable, and

for such regulation the Commission can only substitute one which is reasonable and sufficient.

Union Pacific R. Co. v. Public Utilities Commission, 148 Pac. 667, 673.

Detroit R. Co. vs. Railroad Commission, 171 Mich. 335.

An order substituting for a franchise provision requiring physical transfer of passengers, the requirement of through service at great additional expense is substituting management by the Commission for the regulation provided by law.

"It thus invades the general right of a company to conduct and manage its own affairs and compels it to give the use of its property for less than the general rate to those who come within the provisions of the order (statute), and to that exent it would seem that the order (statute) takes the property of the company without due process of law."

Lake Shore Ry. Co. v. Smith, 173 U. S. 684-691.

"A taking of railroad property under administrative regulation must 'be tested by considering whether in view of all the facts the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet.' The facts being established the question then presented is whether as a matter of law they are adequate to support a finding of requisite public necessity. The mere declaration of a Commission is not conclusive."

Great Northern Ry. v. Minnesota, 238 U. S. 340-345.

"The right of the state to regulate public carriers in the interest of the public is very great, but that great power does not warrant unrea-

sonable interference with the right of management or the taking of the carrier's property without compensation."

Chicago, Milwaukee & St. Paul R. R. Co. v. Wisconsin, 238 U. S. 491-501.

In the case just cited this court said:

"As the state could not authorize the occupant of a lower berth to *take* salable space without pay, neither can the present statute compel the company to *give* that occupant the free use of that space until it is actually purchased by another passenger. The owner's right to property is protected even when it is not in actual use, and the company cannot be compelled to permit a third person to have the free use of such property until a buyer appears."

It is submitted that the order in the case at bar, which gives to a passenger paying fare for transportation over a single franchise route the right to travel in a through car over another franchise route, is more subject to condemnation than a statute which gives the purchaser of a lower berth in a sleeping car the right to direct whether the upper berth shall be open or closed if such upper berth is not actually occupied by some other person.

In the case last cited this court said:

"If the statute is not a reasonable exercise of the police power and yet operates to take property, such taking cannot be justified on the ground that the company *may* be able to secure an increase in rates."

The franchises of appellant provided:

"The grantee, its successors and assigns, shall have the right at any and all times to make rea-

sonable rules and regulations for the management and operation of the railway lines herein provided for, provided that such rules and regulations shall not conflict with the laws of the State of Washington and the charter and ordinances of the city." (Folio 7.)

The franchises provided for physical transfers, the law of the state hereinbefore cited provided for physical transfers and appellant complied with its franchises and with the law. The order of the Commission interfering with the right of appellant to comply, in the management of its property, with its franchises and the law was not regulation but arbitrary interference with the right of appellant to conduct and manage its own affairs.

Lake Shore Ry. Co. v. Smith, 173 U. S. 685-691;
Chicago, Milwaukee & St. Paul R. R. Co. v. Wisconsin, 238 U. S. 491-500;
State ex rel. Oregon R. R. v. Fairchild, 224 U. S. 510-529.

The Supreme Court of Washington, concerning the franchise provisions just quoted, said:

"The right of continuous passage without transfer was asserted in *People ex rel. Linton v. Brooklyn Heights R. Co.,* 69 App. Div., 549; 75 N. Y. Supp. 202. The court refused to compel the maintenance of a through service although unhampered, as we are in this case, by the express sanction of the controlling legislative body."

McGilvra v. Seattle Electric Co., 61 Wash. 38-42.

The court in the case just cited quoted the fol-

lowing passage from *Heidegger v. Metropolitan Street Railway Company,* 126 S. W. 990:

> 'It is true that there would have to be a change of cars at Thirty-first Street, but the line would be continuous with the payment of a single fare. The mere fact of a change of cars would not prevent the line from being a continuous one."

The Supreme Court of Washington then proceeded:

> "To the effect that a railway company can, unless prevented by contract, make schedules, create rules, and prescribe transfer points, see:
>
> *Dryden v. St. Louis Transit Co.,* 120 Mo. App. 424, 96 S. W. 1044;
> *Central of Georgia R. Co. v. Ashley,* 159 Ala. 145, 48 South. 981;
> *Kelley v. New York City R. Co.,* 192 N. Y. 97, 84 N. E. 569;
> *Norton v. Union R. Co.,* 58 Misc. Rep. 188, 109 N. Y. Supp. 73;
> *Baron v. New York City R. Co.,* 120 App. Div. 134, 105 N. Y. Supp. 258;
> *Hampe v. Pittsburg & B. Traction Co.,* 165 Pa. St. 468, 30 Atl. 931.
>
> * * * In most of these cases, such regulations were made without express sanction, and sustained by reference to the general right of public carriers to make reasonable rules and regulations for the conduct of their business. But here we have not only a right vested in the company by its franchise to make all rules and regulations for its government and operation that are not in conflict with the laws of the state or the ordinances of the city, but the regulation has been actually endorsed by the city itself."

C.

The order of the Commission violates Section 10, Article 1 of the Constitution of the United States both in regard to transfers and the right of appellant to make rules for the management of its property.

The franchises of appellant constitute contracts between the municipalities granting such franchises and the grantees and assignees of such franchises. The Supreme Court of Washington has so repeatedly declared.

In speaking of the arbitration clause of the franchise that court said:

> "This provision of the ordinance is, like all others of its provisions, one of the conditions upon which the franchise is granted; that is to say, it is a part of the contract between the city and the grantees of the franchise."
>
> *Wood v. Seattle,* 23 Wash. 1-24.

> "The company is bound under the terms of its franchise to issue transfers. The issuance of transfers from one line to another is a matter wholly within the control of the city, and we cannot make an order in anticipation of a breach of the contract by the company."
>
> *McGilvra v. Seattle Electric Co.,* 61 Wash. 38-46.

> "The contract is executed except in so far as it is measured by time."
>
> *State ex rel. Seattle v. Seattle Electric Co.,* 71 Wash. 213-217.

The state having vested its municipalities with authority to grant street railway franchises, and

such municipalities having legally exercised the power granted, the grantees of such franchises obtained contract and vested rights. The state could not require the grantees to continue operations under specific and distinct franchise contracts and at the same time deprive the grantees of all compensation for rendering the service required. If the grantees by such franchises did not acquire contract and vested rights as to specific rates, they did acquire contract and vested rights for some compensation for the services required by the franchises. An order of The Public Service Commission of the state made pursuant to authority claimed from the state, which deprives the grantees of such franchises of all compensation, notwithstanding that the right to compensation was the condition upon which the franchises were accepted and the street railways constructed, constitutes both a law of the state impairing the obligation of the contract and an act of the state depriving such grantees of their vested rights and property without due process of law.

It is, therefore, respectfully submitted that so much of the order of the District Court as has been appealed from should be reversed, with directions to grant the temporary injunction restraining its enforcement.

JAMES B. HOWE,
HUGH A. TAIT,
Counsel for Appellant.

Office Supreme Court,
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Supreme Court of the United States

October Term, 1916

No. 220

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,

Appellant,

v.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, constituting THE PUBLIC SERVICE COMMISSION of the State of Washington, and W. V. TANNER, Attorney General,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

Reply Brief of Counsel for Appellant

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

Reply Brief of Counsel for Appellant

The brief of counsel for appellees contains some erroneous statements, and we therefore submit this reply brief:

A.

Appellees' brief, at page 10, states:

"1. The order does not impair the obligation of any contract."

The brief then states that the order which appellant complains of does not affect—

(a) its primary franchise,

(b) its secondary franchise,

(c) its subsidiary franchises,

The answer to this statement is that there are no "subsidiary franchises" involved, because none such exist.

The franchises involved are—

1. The corporate franchise of appellant granted by the State of Massachusetts;

2. The secondary special franchises to construct, maintain and operate street railways granted by the municipal corporations mentioned in the bill of complaint.

All of the provisions in regard to the construction, maintenance and operation of street railways, the fares, transfers, and right to make rules, are contained in such special franchises.

These special franchises are the franchises which the supreme court of the state held were contracts.

Wood v. Seattle, 23 Wash. 1-24;

McGilvra v. Seattle Electric Co., 61 Wash. 38-46;

State ex rel. Seattle v. Seattle Electric Co., 71 Wash. 213-217.

B.

Counsel for appellees at pages 24, 25 and 26 of their brief next contend that the right to fix a rate of fare granted by charter does not pass to the purchaser of property from the owner of such charter, and that as the brief of complainant alleges that each of the franchises provide that the grantee shall have the right to charge a passenger fare of five cents for each passenger, such right is limited to the grantee and did not pass to the purchaser or assignee of the franchise. This argument of counsel rests upon the ground that the language of the bill of complaint just cited, having mentioned the grantees of the franchises and not having repeated the statement that the franchises were granted to the grantees, their successors and assigns, the right of the original grantees did not pass to the appellant who became the purchaser and assignee of the franchises.

This view, we submit, is manifestly unsound, for two reasons:

1. The bill alleges that the franchises were granted to the grantees thereof, "their successors and assigns" (folios 3-5).

As the provision in regard to fares and transfers was a part of the franchise, and as the whole of each franchise was granted to the grantees, "their successors and assigns," it necessarily follows that if

such successors and assigns became vested with such franchises they also became vested with each and every part thereof.

The cases cited by counsel at pages 25 and 27 of their brief are not in point, because there was not there involved any question of the assignment of special franchises and the right of the assignee thereof succeeding to the rights conferred upon the original grantee. The question presented was whether the purchaser of property whose original owner was exempt from certain obligations, became by virtue of the purchase likewise exempt.

The distinction between a case where the assignee of a special assignable franchise, being subjected to its burdens, is also entitled to all of its benefits, and one where the question is whether a personal exemption granted by a charter passes with a sale of property, which is not itself exempt from taxation, is too clear to require further argument, even if upon the facts of the case the question were really presented.

2. The question does not, however, arise in the case now before the court because the right to establish and charge a fare of five cents for each passenger transported and to require transfers was granted to the original grantees, "their successors and assigns."

The precise language is:

"The grantee, its successors and assigns, may

establish and take a passenger toll or fare which shall not exceed the sum of five cents for a single continuous ride one way over any line or lines owned or controlled by the grantee, its successors or assigns, between points situated within the city limits, although a transfer or transfers shall be necessary; but no such transfer shall be good except upon the first connecting car at the point of transfer."

Charter and Ordinances of Seattle, 1908, Revised Edition, page 504.

Counsel for appellees say that the court cannot know that this is the language of the franchise because the franchises are not in the record (brief, p. 27).

This suit was instituted in the district court of the United States. That court takes, and this court also takes on an appeal therefrom, judicial notice of the law of the state. The law of the state is as follows:

"In pleading any ordinance of a city or town in this state, it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial knowledge of the existence of such ordinance, and of the tenor and effect thereof."

Remington & Ballinger's Codes & Statutes, Vol. 1, Section 291.

The bill of complaint complies with this requirement of the statute. It is true that the bill alleges the title and date of approval of the ordinances and does not use the word "passage," but that the statute by the word "passage" means "approval" or

other act whereby a council bill is transformed into an ordinance is perfectly plain.

Endlich Interpretation of Statutes, page 542;

Denver & R. G. R. Co., v. Brennaman, 45 Colo. 264;

Cordiner v. Dear, 55 Wash. 479;

Harding v. People, 10 Colo. 387;

Johnson v. Fay, 16 Gray, 144 (Mass.);

Wartman et al. v. The City of Philadelphia, et al.; Pratt et al. v. The City of Philadelphia et al., 33 Pa. St. 202;

Andrews v. St. Louis Tunnel R. Co., 160 Mo. App. 299;

Jackson v. State, 101 Ark. 473;

Mills v. State Board of Osteopathic Registration & Examination, 135 Mich. 525.

It cannot, therefore, be successfully contended that under the franchises appellant, as the assignee of the original grantee, was not equally entitled, as the original grantee, to the right to establish and charge a fare of five cents per passenger, with the right to require a passenger to make a physical transfer from route to route. The order of the Commission requiring the same car to be operated over several routes was a plain change in the contract rights of appellant.

The statute of the state, which vested in the legislative authority of municipal corporations the power to grant franchises for street and electric railways, provided as follows:

"The legislative authority of the city or town having control of any public street * * * may grant authority for the construction, maintenance and operation of electric railroads or railways * * * , *and in granting such authority* the legislative authority of such city or town * * * may prescribe *the terms* and conditions on which such railroads or railways and their appurtenances *shall be constructed, maintained and operated* upon, over, along and across such road or street." (Italics ours).

Remington & Ballinger's Codes and Statutes, Vol. 2, Section 9080.

Such municipal corporations were not vested with power to fix rates except in franchises.

Tacoma Gas. & Elec. Light Company v. Tacoma, 14 Wash. 288.

This case is, therefore, entirely different from *Home Telephone Company v. Los Angeles,* 211 U. S. 265, where the municipality was vested with general power to fix and prescribe rates.

The case of *State ex rel. Webster v. Superior Court,* 67 Wash. 37, so much relied upon by counsel for appellees, was one in which the City of Seattle asserted that it had contract rights in the rates prescribed by the franchise granted by the city to the Independent Telephone Company. It was not a case where the company was insisting that the franchise rates were, as to it, contract rights. The court there said:

"Reduced to its lowest terms the contention of the city is not that it has exercised a dele-

gated power, but that it acted at a time when there was no prohibition on the part of the state, and that this being so the city acted as an *imperium in imperio,* with power to determine the rates to be charged and the time for the contract to run, and that having so acted vested rights of contract and property have attached to the franchise, which the legislature could not thereafter bar or abrogate. These contentions would be meritorious if applied to contracts involving merely private interests, but can have no application where the interests of the state are involved." (pp. 55 and 56).

In the same opinion, at page 50, the court said:

> "The power to fix rates being a right reserved by the people of the state, cannot in the light of the constitution be held to be an incident to the right to frame a freeholder's charter."

The case, therefore, falls within the rule announced by this court in the following cases:

Worcester v. Street Railway Co., 196 U. S. 539, 548, 551;

Hunter v. Pittsburg, 207 U. S. 161, 178.

In the Worcester case this court, in upholding the claim of the company that it had been released from its paving obligations by an act of the legislature, against the city's contention that the obligation to pave was a contract right in favor of the city, said:

> "If these restrictions or conditions are to be regarded as a contract, we think the legislature would have the same right to terminate it with the consent of the railroad company that the city itself would have. These restrictions and conditions are of a public nature, imposed as

> a means of collecting from the railroad company part or possibly the whole of the expense of paving or repaving the streets in which the tracks were laid, and that method of collection did not become an absolute property right in favor of the city as against the right of the legislature to alter or abolish it or substitute some other method with the consent of the company, even though as to the company itself there might be a contract not alterable except with its consent."

To the same effect was the decision of the supreme court of Massachusetts.

> *Springfield v. Springfield Street R. R. Co.*, 182 Mass. 41.

It by no means follows that because rights which a municipal corporation undertakes in granting a franchise to reserve in favor of itself are not contract rights within the meaning of the constitutional provision against impairment by subsequent legislation, that private rights conferred by such franchise are not protected by that provision.

In the case of *State ex rel. Webster v. Superior Court*, 67 Wash. 37, the rights which the supreme court of the state held were not such contractual rights, were rights which the city had reserved in favor of itself when it granted the franchise. The city in such case acted as agent of the state. Street railway franchises are not granted by municipal corporations but by the "legislative authority" of cities as agent of the state.

State ex rel. Walker v. Superior Court, 87 Wash. 584;

Dolan v. Puget Sound Traction, Light & Power Company, 72 Wash. 343, 348;

Ewing v. Seattle, 55 Wash. 229;

Benton v. Seattle Electric Co., 50 Wash. 156.

The state and the grantee of such franchise could, therefore, by mutual consent modify the provisions of such franchise without the consent of the municipality or against the consent of the municipality. Such is the effect of the decision in the Webster case. What was said concerning the right to interfere with the rights of the grantee was *obiter*.

C.

At page 28 of their brief counsel for appellees say:

"The order is not unreasonable or arbitrary."

It is not disputed that the maximum fare which appellant is allowed by the law of the state to charge, for the transportation of each passenger within the city limits, is five cents. There is not the slightest foundation for the claim that appellees have authority to allow a higher fare.

> "No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its passengers transfers entitling such passengers to one continuous trip over and upon portions of its lines within the

same city or town not reached by the originating car."

Laws of Washington, 1911, Sec. 25, p. 558;
Remington & Ballinger's Codes and Statutes, Vol. 3, Section 8626-25.

It is not disputed that if every passenger traveling on the street railway lines under consideration in this case, should pay the maximum fare appellant would operate at a loss because the maximum fare is less than the value of the service rendered, and less than a reasonable rate (folios 16, 362, 368).

It is sought, however, to sustain the order on the theory that it is not one prescribing a rate, but requiring a service. If the maximum rate which the law allows is less than the value of the service which the law requires, and less than a reasonable rate for such service, an order which imposes a new and additional service costing many thousands of dollars, thereby increasing the loss arising from rendering service at an unreasonably low rate, must necessarily be unreasonable, and when such order is made notwithstanding that it is plainly apparent that it is confiscatory, the making of such order is an arbitrary exercise of power.

It is claimed by counsel for appellees, at pages 30 and 31 of their brief, that appellees, in promulgating the order, were only determining the reasonable service to be given with the announced intention that if the rates then in force were insufficient

to permit reasonable compensation, permission to raise such rates would be granted. The answer to this contention is that it is conceded that the maximum rate allowed by law is five cents for each passenger transported within the city limits, and that if every passenger paid such maximum rate, the appellant would nevertheless, on account of such rate being less than a reasonable rate and less than the value of the service rendered, be unable to pay operating expenses much less to obtain compensation for rendering the service of transporting passengers on the lines under consideration. The statement, therefore, that increased compensation if necessary would be allowed was a claim of power on the part of appellees which the law creating appellees denied them the right to exercise. The law which created the Public Service Commission and defined their powers, expressly provided by Section 25, hereinbefore quoted, that the maximum rate should not exceed five cents per passenger throughout the city limits, and as such maximum rate was found by the trial court to be insufficient to pay the operating expenses of appellant, the order imposing upon appellant the obligation to increase its service at an expense upwards of $20,000 a year, without any increase in compensation, was an order depriving appellant of its property without due process of law, as plainly as would be an order requiring it to render a service without any compensation at all.

D.

The statute creating the Public Service Commission of the State of Washington, after providing that street railway fare shall not exceed five cents per passenger, provides as follows:

> "All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable *and sufficient.*" (Italics ours).
>
> Remington & Ballinger's Codes and Statutes, Vol. 3, Sec. 8626-9.

> "Whenever the Commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier, for the transportation of persons or property within the state, or in connection therewith, or that the regulations or practices of such common carrier affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of law, or that such rates, fares or charges *are insufficient to yield a reasonable compensation for the service rendered*, the Commission shall determine the just, reasonable or *sufficient rates*, fares or charges, regulations or practices to be thereafter observed and enforced, and shall fix the same by order as hereinafter provided." (Italics ours.)
>
> Remington & Ballinger's Codes and Statutes, Vol. 3, Sec. 8626-53.

When the statute creating the Commission fixed a maximum fare of five cents per passenger for street railway transportation within the city limits, and required service to be adequate and rates fair, just, reasonable and sufficient, it necessarily meant that for the maximum fare of five cents per passenger a service should not be required which would not only deprive the carrier of all compensation for rendering the service, but cause it to render the service at less than cost. Therefore, when appellees ordered increased service to be given by appellant at greatly increased expense, the cost of which it is conceded could not be met from the rate allowed, though every passenger transported should pay the maximum rate of fare, and though the greater the number of passengers carried the greater would be appellant's loss, such order was both unreasonable and arbitrary.

In *State ex rel. Webster v. Superior Court*, 67 Wash. 37, there was no limitation upon the power of the Commission to raise telephone rates above a specified amount. In this case there is a maximum sum which appellees can neither raise nor permit appellant to exceed.

In the Webster case the supreme court of Washington, at pages 59 and 60, said:

> "If we assume the right to lower rates to make the return conform to a fair interest rate upon a fair valuation, it follows that we must, in conscience, yield the right to those affected to petition for a rate, though it be higher than

a present one, that will accomplish the purpose of the law. These principles have their foundation laid deep in the doctrine of common honesty between man and man—between the public and its servants. They are sustained upon the theory that the public is willing to pay a full return and no more, a fair return and no less, to those who have lent their capital for its benefit." * * *

"To hold that the public service commission is without jurisdiction to raise rates to the point of fairness, as it finds that point to be, would deprive the commission of the right to lower rates."

In the case now before the court, as appellees had no jurisdiction to raise rates to a point of fairness for the service ordered, and thereby prevent appellant from increasing its losses, appellees were without jurisdiction to impose additional burdens. The imposition of such burdens was as effectual a reduction of rate already insufficient as if the service had remained intact and the rate were reduced. If the order had been one in form reducing the rate below five cents per passenger, who could deny the invalidity of the order? The vice in the order is not removed because the order, though silent as to rate, has embodied therein by operation of the statute the requirement of service at a rate which cannot be exceeded and which can afford neither compensation for its rendition nor reimbursement for its cost.

This court has said:

> "The guaranty of the Constitution extends to the protection of fundamental rights—to the substance of the order as well as to the notice and the hearing which precede it."
>
> *Oregon & Washington Railroad & Navigation Company v. Fairchild*, 224 U. S. 510, 524.

In this case jurisdiction existed both on constitutional grounds and by reason of diversity of citizenship. The order of the Commission was illegal, not only because it violated the rights of appellant under the provisions of the Constitution of the United States, but also because it conflicted with the express requirements of the statute creating the Commission, in that the order manifestly required an unreasonable service at a rate conceded to be unreasonably low and less than the value of the service required to be rendered.

It is therefore respectfully submitted that the decree appealed from should be reversed, with directions that the temporary injunction be granted.

JAMES B. HOWE,
HUGH A. TAIT,
Counsel for Appellant.

Supreme Court, U.S.
FILED
MAR 13 1917
JAMES D. MAHER
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY,
Appellant

vs.

CHARLES A. REYNOLDS, FRANK R. SPINNING and ARTHUR A. LEWIS, constituting THE PUBLIC SERVICE COMMISSION of the State of Washington, and W. V. TANNER, Attorney General,
Appellees.

No. 220

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

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Brief of Counsel for Appellees

STATEMENT.

Appellant, a Massachusetts corporation, prior to March 18, 1911, owned and operated, and now owns and operates, a street railway system in the city of Seattle, Washington. Prior to said date, appellant,

by direct ordinances and by assignment, acquired subsidiary franchises from the city of Seattle and the city of Ballard, authorizing appellant to occupy certain streets in said cities with street railway lines. Since the passage of the said ordinances the city of Ballard has become a part of the city of Seattle, and was a part of the city of Seattle at the time of the making and entering of the order which is the cause of this litigation.

By the terms of these subsidiary franchises, under which the lines under consideration are operated, it is provided in substance, as stated in the opinion of the district court:

"That the grantee, its successors and assigns, should have the right at any and all times to make reasonable rules and regulations for the management and operation of the railway lines therein provided for not inconsistent with the laws of the State or the charter and ordinances of the City; that the grantee shall have the right to charge a passenger fare of not exceeding 5 cents for one continuous passage for each passenger; that the grantee shall keep on sale at its main office and power station in the city of Seattle, commutation tickets for one dollar each, entitling the purchaser to twenty-five rides, but such tickets shall not be transferable nor entitle the owner to a transfer, and the company is authorized to make reasonable rules and regulations to enforce the prohibition against transfers." (Trans., p. 46.)

On and prior to March 24, 1915, appellant owned and operated the lines hereinafter referred to. What is known as the Ballard Beach line extends from

Ballard Beach to the intersection of West Fifty-ninth street and Twenty-fourth avenue northwest. At this point the said line connects with so-called other lines of appellant leading to the down town district. On and prior to March 24, 1915, appellant was operating through cars over the Ballard Beach line and the other lines to and from the down town district of the city. Prior to the date mentioned appellant gave notice of its intention to cease giving the character of service last referred to, and to inaugurate a service requiring passengers to transfer from one car to another at West Fifty-ninth street.

On and prior to March 24, 1915, appellant also owned and operated what is referred to as the Alki Point and Fauntleroy lines. At Yesler way these lines, which originated some eight or nine miles south, connect with other lines of appellant leading further into the business district of Seattle. Prior to March 24, 1915, appellant was operating through cars over the Alki and Fauntleroy lines, and other lines, to and from Virginia street, which is about a mile north of Yesler way, but not beyond the business district of Seattle. Prior to the date mentioned, appellant gave notice of its intention to cease giving the character of service last referred to, and to inaugurate a service requiring passengers to transfer from one car to another at Yesler way.

Appellant asserted the right to give the proposed service referred to in the last two paragraphs, by reason of the fact that the franchise obtained from the city of Ballard covers only the route from Ballard Beach to the intersection of West Fifty-ninth street and Twenty-fourth avenue northwest; and the franchises under which the Fauntleroy and Alki lines are operated have their northern termini at Yesler way. "Approximately from seventy-five to ninety-five per cent. of the persons traveling north upon the Alki and Fauntleroy lines proceed north of Yesler way (Paragraph 15, Bill of Complaint, p. 11)."

On March 24, 1915, after a hearing participated in by appellant, the Public Service Commission of Washington made and entered an order requiring appellant to continue the operation of through cars on the Ballard Beach, Alki Point and Fauntleroy lines. This order also required appellant to furnish sufficient cars to provide seats for substantially all persons using the Alki Point and Fauntleroy lines.

By a bill of complaint in the district court, appellant sought to enjoin the enforcement of the order of the commission. The application for the injunction was heard by a circuit judge and two district judges. A temporary injunction was granted, restraining the enforcement of that part of the order relative to providing seats, and an injunction was

denied relative to that part of the order directing through service. This appeal is from so much of the interlocutory decree as denied the temporary injunction.

It is contended by appellant that the effect of this order is to compel the giving of through service on a four-cent ticket; whereas by requiring transfers at the termini of the routes covered by the franchises mentioned, appellant would be enabled to collect five cents for the carrying of a passenger. Appellant asserts that its right to compel the transfers arises out of the franchises and ordinances, and that it also has the right to collect the five-cent fare by reason of the forced transfer.

As we understand the position of appellant, no contention is made at this time for a greater fare than five cents for the carrying of a passenger, but it is asserted that appellant may perform this service in any manner not prohibited by the franchise, or in the manner claimed to be provided for in the franchise, viz.: by causing the transfers, and therefore necessitating the issuance of transfer tickets, to which a passenger traveling on a four-cent ticket is not entitled.

As we view this case, there are but two questions involved, and their statement will include everything presented by appellant.

1. *Does the order impair the obligations of a contract contrary to the Fourteenth Amendment to the Constitution of the United States?*

2. Is the order so unreasonable and arbitrary as to amount to a violation of the *Fourteenth Amendment to the Constitution of the United States* or the public service commission law of the State of Washington?

I. The Order Does Not Impair the Obligation of Any Contract.

In order to arrive at a consideration of the vital point, the franchise rights of appellant may be treated as follows:

(a) Its primary franchise, that is to say, its right to exist as a corporation, which is secured by virtue of the laws of Massachusetts and recognized by the laws of the State of Washington. The order complained of does not affect this right.

(b) Its secondary franchise, that is to say, its authority to construct and operate street railways, electric railways and electric lines in the State of Washington, and make a charge for the services rendered, which is secured by virtue of the laws of the latter state. This is not affected by the order in question.

(c) Its subsidiary franchises, that is to say, those granted in aid of the primary and secondary franchise rights. These are the rights to occupy certain streets in the city of Seattle, which are secured by virtue of ordinances duly passed, under authority from the state, by the municipal corporation. Included in these subsidiary franchises are the rights to collect *certain* fares for service, not exceeding five cents for one continuous passage, "even though a transfer or transfers be *necessary.*" Also may be included the right to refuse a transfer on a four-cent fare, and the "right, at any and all times, to make reasonable rules and regulations for the management and operation of the railway lines herein provided for: Provided, That such rules and regulations *shall not conflict with the laws of the State of Washington* and the charter and ordinances of the city."

The rights granted by the subsidiary franchises to occupy certain streets are not disturbed by the order of the commission. If anything is disturbed, it is the claimed right of the company "to make reasonable rules and regulations for the management and operation of the railway lines." It may be observed that this right is not impaired if the proposed regulation of appellant relative to operation so as to force transfers is unreasonable.

The order of the public service commission does not take away from appellant the right to operate its lines over these streets, and that portion of these franchises is therefore clearly not abrogated. It is claimed, however, that this order in effect compels appellant to transport passengers at the rate of four cents for commutation tickets for a distance in excess of that specified in the franchises, thereby impairing that portion of the franchise which gives to appellant the right to charge a five-cent fare.

The first answer to this is that the order attacked does not in any manner deal with the question of compensation. That order simply is that this appellant, as a public utility operating a single street railway system in the city of Seattle, shall continue to run its Alki Point and Fauntleroy lines to Virginia street and its Ballard Beach line to the down-town district of Seattle. The commission did not order the appellant to furnish four-cent commutation tickets for this service, but upon the contrary, in the concluding portion of the opinion of the commission it was said:

"The commission has ordered a valuation of the company's property. If it should appear upon the valuation that the company cannot provide adequate and sufficient service and at the same time earn a reasonable return upon its investment, the commission will increase its return. On the other hand, if it appears from the valuation of the company's property that the rate now charged for adequate and sufficient service is excessive, the commission will order the rate reduced." (Trans., p. 42.)

Likewise, Mr. C. A. Reynolds, the chairman of the commission, in an affidavit filed in the district court in opposition to the granting of an interlocutory injunction, said:

"That the said public service commission never has refused to permit the said plaintiff to charge a reasonable and sufficient fare for the carrying of passengers upon its lines within the city of Seattle, as will appear by a copy of the opinion attached hereto and made a part hereof." (Trans., p. 34.)

Inasmuch as the entire argument of appellant is predicated upon this erroneous assumption that the order fixes the rate for the service, it would seem that there is no real question before the court. If the appellant complies with the order and then proposes increased fares, it will be time enough to consider the question of the compensation which it should receive for this service. This court, however, will not decide moot questions, and it must therefore assume that a reasonable compensation will be allowed when asked for.

Assuming, however, for the sake of argument, that the order has the effect contended for, it is submitted that it does not impair the obligation of any contract. The fixing of rates to be charged by a public service corporation is a legislative function, subject only to the condition that rates, when fixed, must be reasonable and not confiscatory.

Smyth v. Ames, 169 U. S. 466.
Munn v. Illinois, 94 U. S. 113.

While this court has held that a reasonable contract entered into by a municipal corporation, establishing inviolable rates to be charged by a public service corporation, will be sustained and its obligation protected from impairment where the municipality is authorized to make the econtract, it has also held that the power to make such a contract will not be presumed, but must be given in express language, and that in considering whether such power does exist this court will give great, if not controlling, consideration to the decisions of the highest court of the state.

Freeport Water Company v. Freeport, 180 U. S. 587.

Vicksburg v. Vicksburg Waterworks Co., 206 U. S. 496.

Home Telephone & Telegraph Co. v. Los Angeles, 211 U. S. 265.

Old Colony Trust Company v. Omaha, 230 U. S. 100.

Milwaukee Electric R. & L. Co. v. Railroad Commission, 238 U. S. 174.

We inquire then, was the city of Seattle authorized to fix these rates by granting these franchises, and if it was, could it grant an irrevocable franchise beyond the control of the police power of the state? As did the supreme court of Washington in the case of *State ex rel. Webster v. Superior Court*, 67 Wash. 37, we assume that the power to fix such rates existed.

The inquiry as to whether a franchise so granted may be made irrevocable in the sense that it cannot be modified by the state in the exercise of its police power is answered by the provisions of the constitution and statutes of Washington as construed by the supreme court of that state. Section 18 of article 12 of that instrument provides:

"The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established, and its powers and duties fully defined by law."

Section 10 of article 11, in so far as is here material, provides:

"Any city containing a population of twenty thousand inhabitants or more shall be permitted to frame a charter for its own government consistent with and subject to the constitution and laws of this state * * *"

Section 11 of article 11 provides:

"Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

On March 18, 1911, there was approved by the governor of the State of Washington a law theretofore duly enacted by the legislature, known as the "Public

Service Commission Law" (Chap. 117, Laws of Washington, 1911). This law, among other things, provides:

"The term 'street railroad,' when used in this act, includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad, within this state." (Sec. 8.)

"The term 'common carrier,' when used in this act, includes all railroads, railroad companies, street railroads, street railroad companies, steamboat companies, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing or controlling any such agency for public use in the conveyance of persons or property for hire within this state." (Sec. 8.)

"Sec. 9. All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

"Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons

or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employes and the public."

"Sec. 53. Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, as herein provided, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of such common carrier affecting such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any wise in violation of the provisions of law, or that such rates, fares or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable or sufficient rates, fares or charges, regulations or practices to be thereafter observed and enforced and shall fix the same by order as hereinafter provided.

"Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule as hereinafter provided."

These provisions came before the supreme court in the case of *State ex rel. Webster v. Superior Court*, 57 Wash. 37. In that case it appeared that the city of Seattle had passed an ordinance granting a franchise to a telephone company and fixing a schedule of

rates. Subsequently the Public Service Commission of Washington, acting under the provisions of chapter 117, Laws of 1911, *supra,* made an order directing the company to inaugurate a new schedule of rates which were higher than those fixed by the terms of the franchise. The court held that even though it be assumed that the city had power to fix rates for public service companies operating within its boundaries, such power could not be exercised in derogation of the police power of the state over the same subject-matter, because that power was reserved by the state constitution to the state, and that freeholders' charters and amendments and franchises granted by cities of the first class were therefore always acquired and granted subject to existing laws. For the convenience of the court we insert herein the more important portions of that decision.

"The only question remaining is the all-important one of whether the rates fixed by the ordinance granting the franchise may be altered or annulled by the state under its reserved powers; or, to be more exact, its police power. Much has been said in argument as to the power of the city; whether it had any power to fix rates in the absence of controlling legislation; or whether, granting its power, it holds it by express grant; or whether it is implied. Under the great weight of judicial authority, it seems to be certain that a municipality exercising the delegated power of the state has no right to fix rates unless the power be express * * *.

"But, as we view this case, we may assume that the city of Seattle had lawful authority, when it passed

an ordinance granting a franchise to the company, to fix its tolls.

"Section 10, article 11, of our state constitution, has played an important part in our jurisprudence. The phrase 'subject to general laws,' has been held to be a reservation of a general legislative power in the state, and under it many laws have been passed and many decisions pronounced holding that it was the policy of the state constitution that freeholders' charters and amendments thereto shall always be subject to the control of general laws.

Hindman v. Boyd, 42 Wash. 17, 84 Pac. 609.
Benton v. Seattle Elec. Co., 50 Wash. 156, 96 Pac. 1033.

"To the same effect are:

In re Cloherty, 2 Wash. 137, 27 Pac. 1064.
State ex rel. Seattle v. Carson, 6 Wash. 250, 33 Pac. 428.
Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077.
State ex rel. Fawcett v. Superior Court, 14 Wash. 604, 45 Pac. 23, 33 L. R. A. 674.
Tacoma Gas & Elec. Light Co. v. Tacoma, 14 Wash. 288, 44 Pac. 655.
State ex rel. Navin v. Weir, 26 Wash. 501, 67 Pac. 226.

* * *

"The same principles are affirmed in *Home Telephone Co. v. Los Angeles*, 211 U. S. 265, and *Dawson v. Dawson Tel. Co.* (Ga.), 72 S. E. 508. Notwithstanding it is earnestly contended on behalf of the city that the contract is inviolable, and cannot be abrogated under the contract clause of the Federal constitution * * *.

"Our answer to this contention is that each of these cases is based upon one of two premises; either, as said in the *Cleveland* case, the authority conferred upon the city was 'express and unmistakable'; or the controversy was between the city and its franchisee, the state being in no sense a party and having no interest in the result of the litigation. Where the

state is a party, and it appears that there has been no express grant or waiver of its constitutional right to fix rates so as to give an ordinance the force of a contract binding upon the state (granting that under our constitution this could be done), it cannot be held, as a matter of either law or policy, that a franchise such as the one now under consideration is a contract binding upon the State of Washington; * * *

"Or, as we have said elsewhere in this opinion, the sovereign power of the state cannot be made the subject of a contract so as to defeat the declared right of the people of the whole state to reserve that power to themselves and to put its execution in the hand of the particular agency designated by them in their written constitution.

"The power to fix rates, if exercised by a city, unless that power is clearly expressed by legislative grant, is in the nature of a license, and is revocable at the will of the legislature when, in its judgment, the common good demands its reassertion. The state does not act by contract, but by grant, license or reservation. * * *

"Without exception, courts have, in the absence of positive limitation, upheld the authority of the state as against municipal corporations when dealing with the problems of public service, and have been careful to warn against the danger of admitting a divided authority either to contract or control."

And again in the case of *Spokane v. Spokane & Inland Empire R. Co.*, 75 Wash. 651, at page 656, the supreme court of Washington made use of the following language:

"It will be admitted that the state cannot divest itself of its police power, and whenever it has delegated such power to a municipality, it may, at its pleasure, assume such power and provide for its exercise; and based upon this principle, it was held

in *Ewing v. Seattle*, 55 Wash. 229, 104 Pac. 259, and in *State ex rel. Webster. v. Superior Court, supra,* that, though the power conferred upon the municipality could be traced to the constitution, yet the reservation 'subject to the laws of this state,' as found in Sec. 10, Art. 11, and 'not in conflict with general laws' as found in Sec. 11, was a reservation of all police power to the state to be exercised at its will; and when so exercised, the power granted to the municipality must yield."

We have then the decisions of the supreme court of Washington that under the constitution and laws of that state a municipality cannot make an irrevocable contract fixing rates with a public service corporation. This court has said that the decisions of the state courts with respect to the power of municipal corporations under local laws to make such contracts must be regarded as controlling unless it can unequivocally say that the municipality was in fact authorized to make such contract. The reasons why this court cannot say this in the present instance are so forcibly presented by the state court in the Webster case, *supra,* that no useful purpose would be subserved by a repetition of that argument here. The court will search the statutes and constitution of Washington in vain for any statute authorizing the making of such a contract, and we have the word of the supreme court of Washington that it is in fact prohibited by the constitution of that state. The case in this aspect is much stronger than was the

case of *Home Telephone Company v. Los Angeles,* 211 U. S. 265. In that case it appeared that the city charter of Los Angeles gave the city council power "by ordinance * * * to regulate telephone service and the use of telephones within the city, * * * and to fix and determine the charges for telephone and telephone service and connection." Answering the contention that this authorized the municipality to enter into an irrevocable contract with respect to telephone rates, this court said (p. 274):

"This is ample authority to exercise the governmental power of regulating charges, but it is no authority to enter into a contract to abandon the governmental power itself. It speaks in words appropriate to describe the authority to exercise the governmental power, but entirely unfitted to describe the authority to contract. It authorizes command, but not agreement. Doubtless, an agreement as to rates might be authorized by the legislature to be made by ordinance. But the ordinance here described was not an ordinance to agree upon the charges, but an ordinance 'to fix and determine the charges.' It authorizes the exercise of governmental power and nothing else."

Likewise in the case of *Milwaukee Electric R. & L. Co. v. Railroad Commission,* 238 U. S. 174, it appeared that the supreme court of Wisconsin had held that a statute which authorized municipal corporations to grant to persons who had the right to operate street railways "the use, upon such terms as the

proper authorities shall determine, of any streets, parkways, or bridges within its limits," did not authorize such municipal corporations to contract away the legislative power of the state to fix rates, and that consequently the railroad commission of Wisconsin could reduce the rates fixed by franchise granted to a street railway company in the city of Milwaukee. This court held that the order of the commission did not impair the obligation of any contract in violation of the Fourteenth Amendment, saying that it was unable to say that the statute unequivocally granted to the municipal authorities of Milwaukee the power to make such a contract.

In the case of *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, this court held that a grant to a city of the right "to provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with party or parties who shall build and operate water works," did not authorize the city to make an irrevocable contract fixing rates.

The principles announced in the decisions cited would seem to clearly establish the proposition that no contract right of appellant has been impaired. Certainly if the claimed right to fix rates or to bind the state relative to rates stipulated in the ordinance cannot be sustained, the right to determine the rea-

sonable service cannot be claimed by appellant, nor can the franchise ordinances be construed to bind the state.

In the franchises there is this provision:

"The grantee, its successors and assigns, shall have the right, at any times, to make rules and regulations for the management and operation of the railway lines herein provided for: Provided, That such rules and regulations shall not conflict with the laws of the State of Washington and the charter and ordinances of the city." (Trans., p. 5.)

Giving this provision a reasonable construction, or if necessary, construing it strictly against the grantee, according to the uniform rule, it would appear to include not only the laws of the State of Washington in force at the time of the grant, but also such laws as might be subsequently enacted. There is evidenced no intention on the part of the municipality to prevent any subsequent legislation, even if it should be held contrary to the authorities cited that the city was authorized to bring about such a result.

It would seem also that this conclusion is correct for still another reason. This court in a long line of decisions has held that immunity from the exercise of governmental power, whether that be taxation or rate-making power, will not be implied and that consequently such immunity, if it exists, does not accompany the property of a utility when transferred to a

purchaser in the absence of an express provision upon the subject. We quote from the case of *St. Louis & San Francisco Railway v. Gill*, 156 U. S. 649 (p. 656):

"It has been frequently decided by this court that a special statutory exemption or privilege, such as immunity from taxation or a right to fix and determine rates of fare, does not accompany the property in its transfer to a purchaser in the absence of an express direction to that effect in the statute."

Likewise in *Norfolk & Western Railroad v. Pendleton*, 156 U. S. 667, it was said (p. 673):

"This we have stated to be a salutary rule of interpretation, founded upon an obvious public policy, which regards such exemptions as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirements of the grant construed *strictissimi juris.*"

The following cases are to the same effect:

Morgan v. Louisiana, 93 U. S. 217.

Wilson v. Gaines, 103 U. S. 417.

Louisville & Nashville R. R. Co. v. Palmes, 109 U. S. 244.

People's Gas, Light & Coke Co. v. Chicago, 194 U. S. 1.

Rochester Railway Co. v. Rochester, 205 U. S. 236.

It appears from the bill of complaint in this case that none of the franchises here involved were originally granted to this appellant, but that they have passed by assignment or purchase to appellant from

the original grantees. The ordinances granting the franchises are not in the record. Upon pages 3, 4 and 5 of the record the titles of these ordinances are pleaded, which titles in substance specify that there is granted to certain persons and corporations, their successors and assigns, a franchise to operate street railways upon certain streets in the cities of Seattle and Ballard. Paragraph VI. of the bill of complaint then alleges that each franchise referred to contains substantially the following provision:

"The grantee, its successors and assigns, shall have the right, at any and all times, to make reasonable rules and regulations for the management and operation of the railway lines herein provided for; provided that such rules and regulations shall not conflict with the laws of the State of Washington and the charter and ordinances of the city."

The pleader then continues:

"Each of the franchises provide that the grantee shall have the right to charge a passenger fare for one continuous passage for each passenger not exceeding the sum of five cents, even though a transfer or transfers be necessary."

This is the provision which appellant claims is impaired by the order of the commission. It will be observed that it is not pleaded that the successors and assigns of appellant shall have this right. There is no statute of the state which confers such a right, and it would seem therefore that even though it be held that the original grantees were authorized to

charge a five-cent fare, this right has not passed to appellant by assignment.

In the case of *Rochester Railway Co. v. Rochester,* 205 U. S. 236, this court held that a statute which authorized one corporation to take over "the estate, property, rights, privileges and franchises" of another corporation did not authorize the transfer of an exemption from the necessity of paving tracks between its rails.

Similarly, it was held in *Norfolk & Western Railroad v. Pendleton,* 166 U. S. 657, that a statute which authorized one railroad corporation to absorb another and to thereupon "become absolutely vested with all the rights of franchise and of property which belonged to the same," did not confer upon the ~~consignee~~ grantee the right to charge a certain toll claimed to have been vested in the ~~consignor.~~ grantor

The franchises not being in the record and there being no express allegation that the successors or assigns of the original grantees shall have the right to charge this fare, the court must presume that if the right existed, it did not pass to this appellant. Inasmuch as appellant's entire argument upon this phase of the case is predicated upon the assumption that it has a contract right to charge a five-cent fare, it must fail should the court conclude that this alleged right has not passed to it.

THE ORDER IS NOT UNREASONABLE OR ARBITRARY.

This question must be disassociated from that of impairment of the obligation of contracts. It will be treated on the assumption that the commission had authority to regulate the service of appellant irrespective of provisions in its franchise ordinances relative to the character of service to be given. As stated by the district court, "Ample authority for the order of the commission is found" in the public service commission law of the state.

This order is not a rate regulation. Except in so far as it may be said that all betterments in service have a relationship to the rates, the requirements of the public service commission in this instance do not necessarily affect the rate. Until the utility has been denied the right to reasonable compensation it would seem that there are not sufficient facts appearing to justify the court in interfering.

Since the court has enjoined the enforcement of that part of the order relative to providing seats, and since no appeal has been taken from such action, consideration of the order of March 15, 1915 (Par. 10 of Bill, Tr., pp. 8 and 9), and of that part of the order of March 24, 1915, relative to providing seats, is unnecessary. We have here involved only the reasonableness of that part of the order requiring through service.

With reference to the Alki Point and Fauntleroy lines, we have the allegation of appellant (Trans., p. 11), that "from 75 to 95 per cent. of the persons traveling north upon the Alki and Fauntleroy lines proceed north of Yesler way." This means that the service proposed to be given by this utility will require more than three-fourths of the passengers, men, women and children, to transfer from one car to another in the heart of the business district of the city, with no protection from storms or the rainy weather, surrounded by the traffic of automobiles, buses, teams, street cars, etc., at a point where several of the principal business streets of the city converge. (Trans., p. 32.)

The evidence introduced before the commission is by stipulation not in the printed record, but from the bill it is learned that at times there are thousands of passengers on these lines. (P. 10.) So it appears that there would be thousands of persons transferring from one car to another in the heart of the business district of the city where several of the principal streets converge. The order of the commission is therefore in the interest of health, safety, comfort and convenience of the patrons of this utility.

It is shown by the complaint that the city of Ballard was at one time a suburb of Seattle. It is now within the city limits of Seattle, and the service now

being given brings the passengers to the down-town district of Seattle without transfer. The proposed service would necessitate the transferring of passengers from one car to another on the trip to and from the down-town district. No argument is required to establish the fact that it is in the interest of safety, health, comfort and convenience that men, women and children should not be compelled to make this transfer in all kinds of weather.

Assuming that the authorities herein quoted announce the correct rule, it follows that the state, in regulating the service of appellant, was not bound to take into consideration any of the franchise provisions relative to rates and service. It is alleged in substance that the commission announced its intention to disregard such franchise provisions (Bill, Par. XIII., p. 10). It also appears that the commission announced its intention to permit such increases in rates as might be necessary to afford a reasonable return (p. 42). In the light of such facts, how can it be said that the commission is preventing the utility from earning a reasonable return or that the order imposes arbitrary and unreasonable burdens? On the contrary it is affirmatively shown that the commission was exercising its recognized authority to determine the reasonable service to be given with an

announced intention to permit a reasonable compensation.

With no rate complaint before it the commission was not authorized to determine the rate.

It was so held by the supreme court of Washington in the case of *State ex rel. Great Northern Railway Company v. Railroad Commission,* 47 Wash. 627, at page 633, where it was said:

"* * * the only power to fix permanent rates conferred on the commission, was in cases where a complaint was made in some form charging the existing rate to be unreasonable or unjustly discriminatory, and the railroads given an opportunity to be heard thereon."

See also:

State ex rel. Northern Pacific Railroad Company v. Railroad Commission, 52 Wash. 440, at page 443.

The investigation was not a matter of rates. There was no evidence as to what a reasonable rate would be. Although it may be strenuously argued that the amount of the rate necessarily determines the character of service that can be given, there is but one character of service recognized by the law, i. e., "just, reasonable, safe, adequate and sufficient." The utility is permitted to determine for itself, in the first instance, both the question of the sufficiency of the service and the reasonableness of the rate. This determination is subject to revision by the commis-

sion, but not by the courts. The court may determine whether or not the rule of the commission is so arbitrary or unreasonable as to be a violation of the law, and if the court determines that the rule of the commission violates the law, the original question is again with the utility until the commission again acts. The law prescribes the character of service; the utility controls the acts or facts which determine the character of service; and as long as such acts or facts are sufficient to meet the requirements of the law, neither the commission nor the courts may direct them. The authorization of the commission extends to a correction of acts or facts controlled by the utility when they are not such as to measure up to the standard provided by law. And this authorization is not limited by the desire of the utility; neither is it limited by any rates established by the utility; nor is it limited by the ability or inability of the utility to collect a certain rate. The law authorizes the collection of a reasonable and sufficient rate, and as long as the commission does not attempt to prevent such collection, there is neither a violation of the constitution of the United States nor of the public service commission law of Washington unless the service required is such as to overstep the bounds of reason.

We have then a proposed service which the utility says is reasonable. The commission says it is unrea-

sonable. We have a service heretofore given voluntarily by the utility which the commission says is reasonable, but which the utility contends is unreasonable, basing its contention principally upon the claim that such service is not specifically provided for in its franchise ordinances.

Thus resolved the solution of the problem is one calling for the exercise of judgment, and that of the commission is ordinarily binding on the utility and the courts unless arbitrary action on the part of the commission be apparent.

As was said in the case of *Minneapolis & St. Louis Railroad Co. v. Minnesota*, 186 U. S. 256 (p. 264):

"A more difficult question is that connected with the reasonableness of the rates. The presumption is that the rates fixed by the commission are reasonable, and the burden of proof is upon the railroad companies to show the contrary."

Illinois Central, etc., Railroad v. Interstate Commerce Commission, 206 U. S. 541.

Louisville & Nashville Railroad Co. v. Behlmer, 175 U. S. 648.

East Tennessee, etc., Railroad Co. v. Interstate Commerce Commission, 181 U S. 1.

Interstate Commerce Commission v. Chicago R. I. & Pacific Railway Co., 218 U S. 88.

Dow v. Beidelman, 125 U. S. 680.

Chicago, etc. Railway Co. v. Tompkins, 175 U. S. 167.

The state court has reached a similar conclusion with respect to the findings of the public service commission of that state.

State ex rel. Great Northern Railway Co. v. Public Service Commission, 76 Wash. 625.

Puget Sound Electric Railroad Company v. Railroad Commission, 65 Wash. 75.

State ex rel. Public Service Commission v. Skagit River Telephone & Telegraph Co., 85 Wash. 29.

Appellant is insistent upon its contention that the order requires additional service without additional charge. We find no justification for such a construction of the order. The court will not presume that the commission is attempting to violate any provision of the constitution or the statute. Even without the express declaration of the commission, which is in evidence (p. 42), the court will not construe the order of the commission as requiring service without compensation.

Smyth v. Ames, 169 U. S. 466 at 526.

It is said by appellant that "in dealing with the question now under consideration it is to be remembered that appellant in operating street railways is not operating directly under its corporate or primary franchises" and that "the rule applicable to a steam railroad operating a single line under its articles of incorporation is * * * not applicable to a case

in which title to separate street railways, operated under separate and distinct secondary or special franchises, becomes vested in a single owner and such franchises remain outstanding."

To us this appears to be a distinction without a difference. In any event, it overlooks the fact that under the constitution of Washington as construed by the state courts, there is reserved to the state the power of regulation over public utilities, irrespective of any municipal franchises which may be granted. It follows therefore that whether the system of appellant be considered a single and complete system or a collection of roads, it is still subject to such reasonable rules and regulations as the state may prescribe.

This court has repeatedly held that the state in the exercise of its police power may compel a carrier to furnish adequate connections for the interchange of traffic and the forwarding of the cars of one line over the lines of another, although such connections involve the expenditure of considerable sums of money.

Wisconsin, etc. Railroad v. Jacobson, 179 U. S. 287.

Grand Trunk Railway v. Michigan Railway Commission, 231 U. S. 457.

Pennsylvania Company v. United States, 236 U. S. 351.

Atlantic Coast Line Co. v. North Carolina Corporation Commission, 206 U. S. 1.

Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262.

It would seem, therefore, that in the exercise of the same power the state may compel through service over connecting lines of a single company, be that company a steam railroad or street railroad.

All of the property of appellant, including all of its so-called separate lines and its subsidiary franchises, is owned and operated by virtue of, and subject to, the conditions of its secondary franchise which imposes the obligation to give reasonable service and conform to the laws of the state. This necessarily requires obedience to the mandate of the state directed in the exercise of the police power; and the dividing of the property of appellant into liens, separate or otherwise, cannot make such mandate impotent.

The rule announced in *Northern Pacific Railway Company v. North Dakota,* 236 U. S. 585-595, has no reference to a service order. That case was purely a rate matter. There is no analogy between an attempt to compel a carrier to carry a commodity for less than cost of carrying and in an attempt to compel a carrier to give reasonable service. Had the facts in the Northern Pacific case, *supra,* simply shown that on some divisions of the railroad coal could not

be hauled at a profit on the rate prescribed, there would have been no occasion for condemning the rate. As a matter of fact all of the divisions of the railroad in the state of North Dakota were considered. All of its coal business in the state, all of its revenue from that business, all of its operating expense from that business were considered. From a consideration of all of these facts the prescribed rate was condemned.

Giving the same consideration to all of the passenger business of appellant on its more than two hundred miles of street railway in the city of Seattle, it does not appear that the rate, which it is contended by appellant the order prescribes, does not produce a reasonable return.

It is not unreasonable to assume that the business developed on the Ballard Beach, Alki and Fauntleroy lines contributes materially to the success of the other so-called lines. It is reasonable to assume these three lines were built with the idea of developing the entire railway system. They may be reasonably presumed to be an important factor in developing and maintaining the business of the down-town district where the hauling of passengers is most profitable. There is nothing to indicate that the thousands of persons brought to town by these lines do not frequently use the down-town lines without using them

in conjunction with the supporting lines. The people are brought to the business centers for the transaction of business, and it is reasonable to assume that in the transaction of that business, appellant gets the benefit of the short hauls which are profitable. It may be noticed that without the congregating of these people in the business district there would be no short hauls. The court may judicially know that if the only use made of the lines of appellant was to travel to and from the outlying districts, street railway business would and could not be a success.

Further, if the proposition of appellant is approved, it would result in fixing street car rates on a mileage basis, which, thus far, has not been adjudged a practicable or reasonable basis. Indeed, the contention of appellant, carried to its logical conclusion, would not only result in the mileage basis, but the mileage rate would be dependent on the character of the operation; i. e., whether the particular district was densely or sparsely settled, determining the volume of business; the cost of constructing the particular line; the cost of operating the particular line; the cost of reproducing the particular line; and all other elements entering into the consideration of a rate.

Manifestly such a method at present is impracticable and unreasonable. The railway system of appellant must be considered as a whole and not by the dis-

associated properties which may be owned by appellant.

This rule is not only recognized by the supreme court of the State of Washington, but it has been repeatedly reaffirmed in this court. In the case of *St. Louis & S. F. R. Co. v. Gill*, 156 U. S. 648, at page 665, the court, speaking through Justice Shiras, said:

"In this state of facts we agree with the views of the supreme court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas."

The rule has also been followed in:

Willcox v. Consolidated Gas Company, 212 U. S. 19, at page 54.

Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541, at page 549.

Minneapolis & St. Louis Railroad Company v. Minnesota, 186 U. S. 256, at page 267.

And also in the case of *Louisville & Nashville Railroad Company v. Garrett,* 231 U. S. 298, at pages 313 and 314, it is said:

"But it is the province of the legislature to make the law; and when the legislature, or the body acting under its authority, establishes the rate to be thereafter charged by the carrier, it is the duty of the courts to enforce the rule of law so made unless the constitutional limits of the rate-making power have been transgressed. The rate-making power necessarily implies a range of legislative discretion; and, so long as the legislative action is within its proper sphere, the courts are not entitled to interpose and upon their own investigation of traffic conditions and transportation problems to substitute their judgment with respect to the reasonableness of rates for that of the legislature or of the railroad commission exercising its delegated power. It may be assumed that the statute of Kentucky forbade arbitrary action; it required a hearing, the consideration of the relevant statements, evidence and arguments submitted, and a determination by the commission whether the existing rates were excessive. But, on these conditions being fulfilled, the questions of fact which might arise as to the reasonableness of the existing rates in the consideration preliminary to legislative action would not become, as such, judicial questions to be re-examined by the courts. The appropriate questions for the courts would be whether the commission acted within the authority duly conferred by the legislature, and also, so far as the amount of compensation permitted by the prescribed rates is concerned, whether the commission went beyond the domain of the state's legislative power and violated the constitutional rights of property by imposing confiscatory requirements.

Stone v. Farmers' Loan & Trust Co., 116 U. S. 307, 331.

Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362, 397-399.
Smyth v. Ames, 169 U. S. 466, 526.
San Diego Land & Town Co. v. National City, 174 U. S. 739, 754.
San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 446.
Knoxville v. Knoxville Water Co., 212 U. S. 1, 8, 17.
Willcox v. Consolidated Gas Co., 212 U. S. 19, 41.
The Minnesota Rate Cases, 230 U. S. 352, 433, 434."

We will not discuss the question propounded by appellant as to whether or not non-compliance with the terms of one franchise would be ground for forfeiture of all or only the one not complied with. That is not within the issues as we understand them. However, non-compliance with what we have termed the secondary franchise, the franchise to operate street railways in the manner provided by law, might materially affect all of the subsidiary franchises in so far as appellant is concerned.

Much of what has just been said with respect to the reasonableness of this order is based upon the assumption that the effect of the order is to compel appellant to carry passengers over this added distance at the present rate. As is pointed out in the opening part of this brief, however, this assumption is not supported by the record because this order does not, in fact, fix the rates for this service, but upon

the contrary, the commission expressly disclaimed any intention of so doing and said that upon a proper showing a reasonable rate would be allowed.

Strictly speaking, the only question presented is whether an order compelling a continuous carriage is reasonable. Assuming, as the court must in the absence of evidence to the contrary, that a reasonable and fair return for the service will be allowed, we think it evident that such an order would be reasonable, and even appellant does not contend for the contrary. Under either construction of the order, however, there is nothing in this regard to show that it is unreasonable.

The judgment of the district court was correct and should be affirmed.

Respectfully submitted,

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PUGET SOUND TRACTION, LIGHT & POWER COMPANY *v.* REYNOLDS ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF WASHINGTON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

No. 220. Submitted April 25, 1917.—Decided June 11, 1917.

City ordinances granting street railway franchises in the State of Washington, with the right at any and all times to make reasonable rules and regulations for the management and operation of the railway lines thereby authorized, contained a proviso that such rules and regulations should not conflict with the laws of the State. *Held:* (1) That the proviso, fairly construed, meant the laws as they should from time to time exist. (2) That the act establishing the Public

Service Commission of Washington (Laws 1911, c. 117), and orders of the commission requiring the appellant company to run through cars beyond the limits of the lines covered by such franchises over other parts of its system, were within the description of the proviso, and so did not impair its contract rights (if such they were) to make such rules and regulations.

A municipality cannot, by contract with a street railway company, foreclose the exercise of the police power of the State in respect of the regulation of rates of fare and transfer privileges, unless clearly authorized to do so by the supreme legislative power. *Detroit United Railway* v. *Michigan*, 242 U. S. 238, distinguished.

Under the Constitution of Washington, which antedated the ordinances here in question, contractual provisions in franchises conferred by municipal corporations without express legislative authority are subject to be set aside by the legislature; and the Public Utilities Act, *supra*, supersedes any conflicting ordinance or charter provision of a city.

Where several street railway lines, built under distinct franchises, are owned and operated as one system, a public regulation concerning car service and fares will not be adjudged confiscatory because of its financial results to the line immediately affected, if the system as a whole remains profitable.

Where several street railway lines, built under distinct franchises, are owned and operated as one system, it is clearly within the bounds of reasonable regulation to establish through service between them, for a single fare.

223 Fed. Rep. 371, affirmed.

THE case is stated in the opinion.

Mr. James B. Howe and *Mr. Hugh A. Tait* for appellant.

Mr. W. V. Tanner, Attorney General of the State of Washington, *Mr. Scott Z. Henderson* and *Mr. L. L. Thompson*, Assistant Attorneys General of the State of Washington, and *Mr. C. E. Arney* for appellees.

MR. JUSTICE PITNEY delivered the opinion of the court.

Appellant (plaintiff below) owns and operates a street railway system in the City of Seattle, Washington,

aggregating about 200 miles, as assignee of numerous franchises granted to its predecessors in interest by the cities of Seattle, West Seattle, and Ballard, and by King County. It filed its bill in the District Court to obtain relief from the operation and effect of an order made by the Public Service Commission of the State on March 24, 1915, bringing in as defendants the members of the commission and the Attorney General of the State. Plaintiff being a corporation of the State of Massachusetts, and defendants citizens of the State of Washington, the jurisdiction was invoked both upon the ground of diversity of citizenship and upon the ground that the order complained of was alleged to impair the obligation of contracts and deprive plaintiff of its property without due process of law, in violation of the Constitution of the United States. The order was made as the result of an investigation of which plaintiff had notice, and it contains the following provisions:

"(1) That the defendant company [plaintiff] continue the operation of through service on the Ballard Beach Line.

"(2) That the Alki Point and Fauntleroy Park lines be operated through the City of Seattle on First or Second Avenue as far north at least as Virginia Street.

"(3) That the defendant company furnish sufficient cars to provide seats for substantially all persons using the Alki Point and Fauntleroy Park lines."

The third paragraph was subject to a qualification; but since the District Court granted an injunction against this part of the order, and defendants have not appealed, the qualifying clause need not be set forth and we may confine our attention to the requirements of paragraphs 1 and 2. As to these, the District Court, three judges sitting, denied an application for a temporary injunction (223 Fed. Rep. 371), and plaintiff brings the case here by direct appeal under § 238, Jud. Code.

In order to understand the effect of the first two paragraphs and the grounds upon which they are attacked, it should be stated that the Ballard Beach line was constructed and is operated under a franchise ordinance of the City of Ballard, which city afterwards became and now is a part of the City of Seattle. The line extends from Ballard Beach to the intersection of West 59th Street and 24th Avenue, at which point it connects with lines of plaintiff that were constructed under other franchises. For some time prior to and at the date of the making of the order in question, plaintiff had been and was operating through cars over the Ballard Beach line and the connecting lines to and into the business section of Seattle, instead of physically transferring passengers from car to car at West 59th Street and 24th Avenue. Because, as is said, of the expense attached to the operation of through cars, plaintiff had given notice that it would discontinue such operation and require the transfer of passengers at the point mentioned. The effect of the order was to require plaintiff to continue the through service.

The Alki Point and Fauntleroy Park lines, each of them 8 or 9 miles in length, were constructed under separate franchises granted to predecessors in interest of plaintiff by the City of Seattle. They have their northern termini at or about Yessler Way, but for two or three years prior to the date of the order cars on these lines, instead of stopping on their north-bound trips at that point, continued about a mile farther north along First or Second Avenue to Virginia Street, in the business district of the city. Shortly before the promulgation of the order, this through service was discontinued, and north- and south-bound passengers required to transfer at Yessler Way. The effect of the order was to compel the reinstatement of the through service.

The ordinances under which these three lines were constructed provide in substance that the company "shall

have the right at any and all times to make reasonable rules and regulations for the management and operation of the railway lines herein provided for; provided, that such rules and regulations shall not conflict with the laws of the State of Washington and the charter and ordinances of the city." Each franchise provides also that the company shall have the right to charge a passenger fare for one continuous passage not exceeding five cents, even though a transfer be necessary, but shall sell commutation tickets entitling the purchaser to 25 rides for one dollar, such tickets however, not to be transferable and not to entitle the owner to the transfer privilege.

(1) One ground of complaint respecting the order of the commission is that, in requiring passengers to be carried beyond the limits of a particular franchise, it in effect confers the transfer privilege upon holders of commutation or "four-cent" tickets. The order says nothing about rates of fare; but we will assume, as the District Court assumed, that it has the effect attributed to it in this respect.

It is urged that the order impairs the obligation of the contracts contained in the franchise ordinances, both in regard to transfers and in regard to plaintiff's right to make rules for the management and operation of its lines. As to the latter point, the proviso that the rules "shall not conflict with the laws of the State," etc., by fair construction, means the laws as they shall from time to time exist. The act establishing the Public Service Commission (Laws, 1911, c. 117) and orders made by that commission are within the description; hence, the contract, if it be a contract, was subject to and is not impaired by the order in question.

Assuming (what is not clear) that the provision in the franchise ordinances respecting the rates of fare and the transfer privilege are contractual in form, still it is well settled that a municipality cannot, by a contract of this

nature, foreclose the exercise of the police power of the State unless clearly authorized to do so by the supreme legislative power. The Constitution of Washington, Art. XII, § 18, requires the legislature to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination in rates by railroads and other common carriers, and provides that "A railroad and transportation commission may be established, and its powers and duties fully defined by law." By Art. XI, § 10, any city containing a population of twenty thousand inhabitants or more is permitted to frame a charter for its own government "consistent with and subject to the constitution and laws of this state." This constitution was adopted in 1889, long previous to the date of the earliest of plaintiff's franchise ordinances. The Supreme Court of Washington has held that the provisions of municipal charters are subject to the legislative authority of the State; that the Public Utilities Act superseded any conflicting ordinance or charter provision of any city; and that contractual provisions in franchises conferred by municipal corporations without express legislative authority are subject to be set aside by the exercise of the sovereign power of the State. *Ewing* v. *Seattle*, 55 Washington, 229; *State ex rel. Webster* v. *Superior Court*, 67 Washington, 37, 43–50.

The present case is very clearly distinguishable from *Detroit United Railway* v. *Michigan*, 242 U. S. 238, 248, where the state legislature had expressly provided that the municipal corporation might make a binding agreement with a street railway respecting the rates of fare.

(2) It is insisted that neither the Alki nor the Fauntleroy Park line is earning sufficient to pay its operating cost, or ever can do so under a fare limited to five cents, and that for this reason an order requiring these lines to carry passengers beyond the termini fixed in their fran-

chises upon four-cent tickets, and to give them the more costly through service by means of a single car, is necessarily a taking of plaintiff's property without compensation, and hence without due process of law within the meaning of the Fourteenth Amendment. A similar point was made in the bill with respect to the Ballard Beach line, but is not seriously pressed here. As to the other two lines, there seems to be no question that since they run for a considerable distance over the tide flats, receiving and discharging but few passengers *en route*, so that a majority of the passengers are carried distances of five or six miles, these lines, separately considered, never have paid operating expenses, and probably never will.

But we cannot accede to the suggestion that the question whether the commission's order is confiscatory or otherwise arbitrary within the inhibition of the Fourteenth Amendment is to be determined with reference alone to the Alki, the Fauntleroy, or the Ballard Beach lines. These are and long have been operated by plaintiff as parts of a system comprising two hundred miles of tracks. The commission found that the net earnings of the system for the year ending February 28, 1915, not including depreciation and taxes, were upwards of $1,600,000; that the company had refused to produce the valuations of its property made by experts, and had failed to show that there was not sufficient return from its property to pay operating expenses, taxes, and depreciation, and leave a balance. And from the evidence introduced the commission found the fact to be that, allowing for the services required by its order, the company would have net returns over and above operating expenses, taxes, and depreciation. It was not and is not contended that the system earnings are unremunerative.

Plaintiff relies upon *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 604, where this court held that a

statute which segregated a single commodity, and imposed upon it a rate that would compel the carrier to transport it for less than the proper cost of transportation, was in excess of the power of the State. In our opinion, that decision is inapplicable, the present case being controlled rather by *St. Louis & San Francisco Ry. Co.* v. *Gill*, 156 U. S. 649, 665, where the State of Arkansas had prescribed a maximum rate of three cents per mile for each passenger, under a penalty payable to the passenger from whom an overcharge was exacted, and in an action to recover such a penalty the company defended on the ground that the portion of its road over which plaintiff was carried was highly expensive to construct and maintain, and that the cost of maintaining it and transporting passengers over it exceeded the maximum rate fixed by law. But this court held "that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; . . . and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas."

(3) Plaintiff's brief contains some general attacks upon the effect of the commission's order in requiring plaintiff to carry passengers over portions of "separate and distinct franchise routes" upon payment of a single fare. This criticism is not well founded. Even were the several portions of its lines separately owned, they being operated practically as a single system, it would be within the

bounds of reasonable regulation to establish through service and a joint rate. *Wisconsin, Minnesota & Pacific R. R. Co.* v. *Jacobson*, 179 U. S. 287, 296, 301; *Michigan Central R. R. Co.* v. *Michigan Railroad Commission*, 236 U. S. 615, 629.

The decree of the District Court, so far as appealed from, is

Affirmed.

THE CHIEF JUSTICE and MR. JUSTICE MCKENNA dissent because they are of the opinion that this case as a matter of authority is controlled by *Detroit United Railway* v. *Michigan*, 242 U. S. 238, and that as a matter of original consideration the assailed legislation has impaired the obligation of a contract in violation of the Constitution of the United States and was repugnant to the Constitution because wanting in due process.

MR. JUSTICE MCREYNOLDS also dissents.